TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 190 28.

THE WISCONSIN, MINNESOTA AND PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

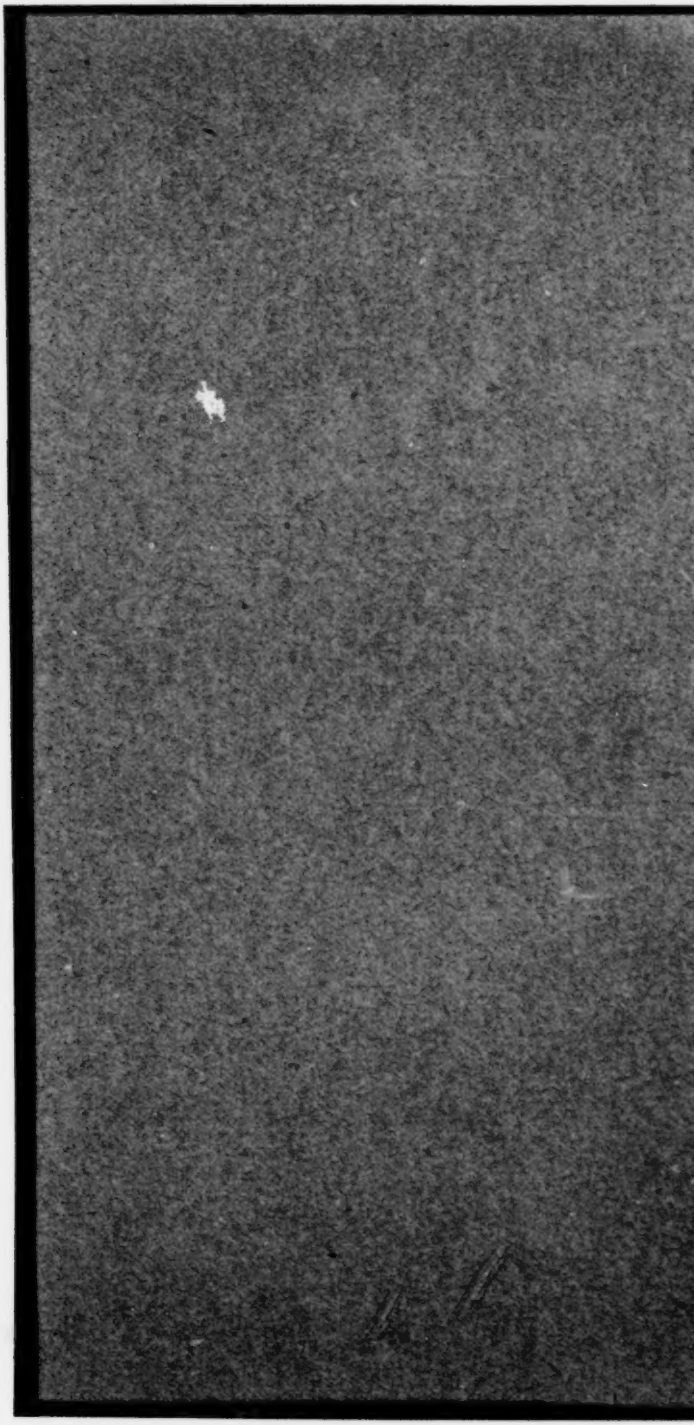
vs.

JACOB F. JACOBSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED JANUARY 30, 1899.

(17,283.)



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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because that in the records and proceedings and also in the rendition of the judgment of a plea which is in the supreme court of Minnesota, before you or some of you, being the highest court of law or equity in said State in which a decision could be had in the said suit between Jacob F. Jacobson, plaintiff, and The Wisconsin, Minnesota and Pacific Railroad Company and The Willmar & Sioux Falls Railway Company, defendants, wherein was drawn in question the validity of a statute of the State of Minnesota on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such validity, a manifest error hath happened, to the great damage of the Wisconsin, Minnesota and Pacific Railroad Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein given, *that*, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of December, A. D. 1898.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

HENRY D. LANG,
Clerk of the Circuit Court of the United States in and for District of Minnesota.

2 [Endorsed:] State of Minnesota, county of ——. District court, — judicial district. Wis., Minn. & Pacific R. R. Co., plaintiff in error, *vs.* Jacob F. Jacobson, defendant in error. Writ of error. Due service of the within by copy is hereby admitted at St. Paul, Minn., *Minnesota*, this 4th day of Jan'y, A. D. 1899. W. B. Douglas, attorney general. Albert E. Clarke and W. F. Booth, 1104 Guaranty Loan building, Minneapolis, Minn., attorneys for ——.

3 UNITED STATES OF AMERICA, *ss:*

To Jacob F. Jacobson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to the writ of error filed in

the clerk's office of the supreme court of the State of Minnesota, wherein The Wisconsin, Minnesota and Pacific Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Chas. M. Start, chief justice of the supreme court of the State of Minnesota, this 30th day of December, A. D. 1898.

CHAS. M. START,
Chief Justice of the Supreme Court, State of Minnesota.

4 [Endorsed:] State of Minnesota, county of ——. District court, — judicial district. Wis., Minn. & Pacific R. R. Co., plaintiff in error, *vs.* Jacob F. Jacobson, defendant in error. Citation. Due service of the within by copy is hereby admitted, at St. Paul, Minnesota, this 4th day of January, A. D. 1899. W. B. Douglas, per C. Tousely, attorney for def't in error. Albert E. Clarke and W. F. Booth, 1104 Guaranty Loan building, Minneapolis, Minn., attorneys for —.

5 To the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota:

Now comes the Wisconsin, Minnesota and Pacific Railroad Company, a corporation of the State of Minnesota and a citizen of the United States of America, by its attorney, Albert E. Clarke, and complains that in the records and proceedings and also in the rendition of the judgment in a suit between Jacob F. Jacobson, plaintiff, and said Wisconsin, Minnesota and Pacific Railroad Company and The Willmar & Sioux Falls Railway Company, defendants, in the supreme court of the State of Minnesota, that being the highest court of law or equity in said State of Minnesota in which a decision could be had in said suit, and in which a final judgment was rendered against the defendants on the 2nd day of May, A. D. 1898, in said suit, wherein it was adjudged that the provisions of chapter 91 of the General Laws of 1895 in and for the State of Minnesota, amendatory of chapter 10, General Laws 1887 of said State, which requires the construction of connecting tracks and the interchange of business and traffic between intersecting railways, is not in violation of the fourteenth amendment of the Constitution of the United States, in that the State of Minnesota, by and through the provisions of said chapter 91, assumes to abridge the privileges and immunities of said Wisconsin, Minnesota and Pacific Railroad Company as a citizen and denies to it the equal protection of the laws, and deprives it of its property or the use thereof without due compensation or due process of law, as well as the right of liberty of contracting with reference to its business.

It was also adjudged by said supreme court of the State of Minnesota by its final judgment in said suit that the provisions of said chapter 91 of the General Laws of Minnesota for the year 1895 are

not in violation of the fourteenth amendment of the Constitution of the United States, in that by the provisions of said chapter the State of Minnesota denies to said Wisconsin, Minnesota and Pacific Railroad Company the right to contract with reference to its business, and thus takes its property without its consent and compels said railroad company to enter into involuntary, unreasonable, and unprofitable contracts with another railroad company, at the instance of third parties, resulting in the loss of business and revenue on the part of said railroad company.

6 It was also adjudged by said supreme court of Minnesota by its final judgment in said suit that the provisions of chapter 91 of the General Laws of the State of Minnesota for the year 1895 are not in violation of section 10, article 1, of the Constitution of the United States, in that the provisions of said chapter impaired the obligations of the charter contract between said State of Minnesota and said Wisconsin, Minnesota and Pacific Railroad Company.

It was also adjudged by said supreme court of Minnesota by its final judgment in said suit that the provisions of said chapter 91 of the General Laws of Minnesota for the year 1895 are not in violation of section 8, article 1, of the Constitution of the United States, in that the State of Minnesota by the provisions of said chapter assumes to regulate commerce between several States and compel the defendants in said suit to make joint rates for the transportation of interstate traffic.

All of which appears in the records and pleadings in said suit, whereby manifest error has happened, to the great damage of said Wisconsin, Minnesota and Pacific Railroad Company, defendant in said suit.

Wherefore said Wisconsin, Minnesota and Pacific Railroad Company, one of the defendants in said suit, prays for the allowance of a writ of error, and for such other process as may cause the same to be corrected by the Supreme Court of the United States.

ALBERT E. CLARKE,
Attorney for Wisconsin, Minnesota and Pacific Railroad Company, Defendant.

Allowed.
CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

St. Paul, Minn., December 22d, 1898.

7 [Endorsed:] Copy. State of Minnesota, county of ——. Supreme court, — judicial district. Jacob F. Jacobson, plaintiff, *vs.* Wisconsin, Minn. & Pacific R. R. Co. *et al.*, defendants. Petition for writ of error.

Endorsed: Filed Jan. 19, 1899. Darius F. Reese, clerk.

8 *Assignment of Errors Made and Filed by Defendant and Appellant in the State Supreme Court.*

I. The court erred in holding that the provisions of chapter 91 of the General Laws of 1895, amendatory of chapter 10 of the General Laws of 1887, of the acts of the legislature of the State of Minnesota, which require the construction of connecting tracks and the interchange of business and traffic between intersecting railways, is not in violation of section 2, article 1, of the constitution of the State of Minnesota, in that it deprives this defendant of its business and property and the right to contract in relation thereto; deprives this defendant of the right to use and operate its property in the manner and for the purposes for which it was acquires; requires it to surrender its business to others, and compels it to enter into unprofitable contract relations destructive of its business.

II. The court erred in holding that the provisions of said chapter 91 of the Acts of 1895 are not in violation of section 13, article 1, of the constitution of the State of Minnesota, in that the provisions of said chapter assume to authorize the taking of private property for public use without just compensation therefor first paid or secured.

III. The court erred in holding that the provisions of said chapter 91 of the General Laws of 1895 are not in violation of section 11, article 1, of the constitution of the State of Minnesota, in that the provisions of said chapter impair the obligations of the charter contract between said State of Minnesota and this defendant.

IV. The court erred in holding that the provisions of said chapter — are not in violation of section 8, article 1, of the Constitution of the United States, in that the State of Minnesota, by the provisions of said chapter, assumes to regulate commerce between the several States and to compel the defendants to make joint rates for the transportation of interstate traffic.

9 V. The court erred in holding that the provisions of said chapter 91 are not in violation of the 14th amendment to the Constitution of the United States, in that the State of Minnesota, by and through the provisions of said chapter 91, assumes to abridge the privileges and immunities of this defendant as a citizen, and denies to this defendant the equal protection of the laws and deprives it of its property or the use thereof without due compensation or due process of the law, as well as the right of liberty of contracting with reference to its business.

VI. The court erred in holding that the provisions of said chapter 91 are not in violation of the 14th amendment to the Constitution of the United States, in that by the provisions of said chapter the State of Minnesota denies this defendant the right to contract with reference to its business, and thus takes its property without its consent and compels this defendant to enter into involuntary, unreasonable, and unprofitable contracts with another railroad company at the instance of third parties, resulting in the loss of business and revenue on the part of this defendant.

VII. The court erred in holding that the provisions of said chapter 91, General Laws 1895, are not in violation of section 10, article 1

of the Constitution of the United States, in that the provisions of said chapter impair the obligations of the charter contract between the said State of Minnesota and this defendant.

VIII. The court erred in holding that the provisions of said chapter 91, General Laws 1895, are valid and in conformity with the provisions of section 2, article 1, and section 13, article 1, of the constitution of the State of Minnesota.

IX. The court erred in holding that the provisions of said chapter 91, General Laws of 1895, are in conformity with the provisions of section 8, article 1, of the Constitution of the United States and the 14th amendment to the Constitution of the United States and section 10, article 1, of the Constitution of the United States.

X. The court erred in holding that the provisions of said chapter 91 of the General Laws of 1895 requiring all common carriers to provide at all points of connection, crossing, or intersection at grade track connections for transferring cars from their lines or tracks to those of any other common carrier whose line or tracks may connect with, cross, or intersect their own, and requiring all common carriers at said points of intersection to provide equal and reasonable facilities for the exchange of cars and traffic between their respective lines, and providing for the establishment of through joint rates between such carriers, are not in violation of the provisions of sections 2 and 13 of article 1 of the constitution of the State of Minnesota and sections 8 and 10, article 1, of the Constitution of the United States and the 14th amendment to the Constitution of the United States.

XI. The court erred in holding that there is evidence of necessity for the construction of the connection sufficient to justify or authorize the judgment.

STATE OF MINNESOTA, ss:

Supreme Court.

I, D. F. Reese, clerk of the supreme court of the State of Minnesota, do hereby certify that the above and foregoing assignment of errors was made and filed by the defendants and appellants in the above-entitled action of Jacobson F. Jacobson, respondent, *v.* Wisconsin, Minnesota & Pacific Railroad Company and The Willmar and Sioux Falls Railway Company, appellants. Said assignment of errors was filed in said supreme court on the 8th day of February, 1898, in accordance with the rules and practice of said court, and became and constituted a part of the record upon which said cause was heard, tried, and determined and upon which the same was argued and submitted in said court.

In witness whereof I have hereunto set my hand and affixed the seal of the supreme court of the State of Minnesota, at the capital, St. Paul, Minnesota, this — day of January, 1899.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk of the Supreme Court of Minnesota,
By J. L. HELM, *Deputy.*

11 [Endorsed:] State of Minnesota, supreme court. Jacob F. Jacobson, respondent, *vs.* Wisconsin, Minn. & Pacific R. R. Co. *et al.*, appellant-. Assignments of error.
Endorsed: Filed Jan. 19, 1899. Darius F. Reese, clerk.

12 In the Supreme Court of the United States.

WISCONSIN, MINNESOTA AND PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
JACOB F. JACOBSON, Defendant in Error.

Assignment of Errors.

The plaintiff in error respectfully submits that the supreme court of the State of Minnesota erred in this:

I. The court erred in holding that the provisions of chapter 91 of the General Laws of the State of Minnesota for 1895, amendatory of chapter 10 of the General Laws of 1887 of the acts of the legislature of the State of Minnesota, which require the construction of connecting tracks in the interchange of business and traffic between intersecting railways, is not in violation of the 14th amendment of the Constitution of the United States, in that the State of Minnesota, by and through the provisions of said chapter 91, assumes to abridge the privileges and immunities of the plaintiff in error as a citizen, denies to it the equal protection of the laws, and deprives it of its property and the use thereof without due compensation or due process of law, and denies to it the right of contracting with reference to its own business.

II. The court erred in holding that the provisions of said chapter 91, General Laws 1895, are not in violation of the 14th amendment to the Constitution of the United States, in that by the provisions of said chapter the State of Minnesota denies to the plaintiff in error the right to contract with reference to its business, and thus takes its property without its consent, and compels it to enter into involuntary, unreasonable, and unprofitable contracts with another railroad company at the instance of third parties, resulting in a loss of business and revenue on the part of the plaintiff in error.

III. The court erred in holding that the provisions of said chapter 91, General Laws 1895, are not in violation of section 10, article 1, of the Constitution of the United States, in that the pro-
13 visions of said chapter impair the obligation of the charter contract between said State of Minnesota and the plaintiff in error.

IV. The court erred in holding that the provisions of said chapter 91, General Laws 1895, are not in violation of section 8, article 1, of the Constitution of the United States, which confers upon Congress the exclusive power to regulate commerce among the several States.

14 [Endorsed:] In the Supreme Court of the United States. Wisconsin, Minnesota & Pacific R. R. Co., pl'ff in error, *vs.* Jacob F. Jacobson, def't in error. Assignment of errors. Endorsed: Filed Jan. 19, 1899. Darius F. Reese, clerk.

15 Supreme Court of the United States, *ss:*

JACOB F. JACOBSON, Plaintiff,
vs.
WISCONSIN, MINNESOTA AND PACIFIC RAILROAD COMPANY, Defendant.

Know all men by these presents that we, The Wisconsin, Minnesota and Pacific Railroad Company, as principal, and The National Surety Company, a corporation, as surety, are held and firmly bound unto Jacob F. Jacobson in the sum of one thousand ($1,000.00) dollars, to be paid to the said Jacob F. Jacobson, his heirs or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals and dated this 3d day of January, A. D. 189–.

Whereas the above-named Wisconsin, Minnesota and Pacific Railroad Company hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Minnesota:

Now, therefore, the condition of this obligation is such that if the above-named Wisconsin, Minnesota and Pacific Railroad Company shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

WISCONSIN, MINNESOTA AND PACIFIC RAILROAD COMPANY,
By L. F. DAY, *Its General Manager.*
Attest: L. B. ARNOLD, *Secretary.*
NATIONAL SURETY COMPANY, [SEAL.]
[SEAL.] By J. W. LUSK, *Resident Vice-President.*
By CHAS. C. SHARP, *Resident Ass't Secretary.*

Signed, sealed, and delivered in presence of—
C. E. SWAN.
J. J. HARPER.
W. S. McCURDY.
L. F. HOLCOMBE.

16 STATE OF MINNESOTA, } *ss:*
County of Ramsey, }

On this 3rd day of Jan'y, 1899, before me personally appeared Chas. C. Sharp, resident assistant secretary of the National Surety

Company, the above-named corporation, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the city of St. Paul; that he is resident assistant secretary of said corporation, The National Surety Company; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal; that it was affixed by order of the board of directors of said corporation, and that he signed said instrument as resident assistant secretary of said corporation by like authority; and the said Chas. C. Sharp further said that he is acquainted with J. W. Lusk; knows him to be resident vice-president of said company; that the signature of said J. W. Lusk subscribed to the said instrument is the genuine handwriting of said J. W. Lusk, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Chas. C. Sharp, resident assistant secretary, and the said Chas. C. Sharp acknowledged said instrument to be the free act and deed of said corporation.

W. S. McCURDY,
Notary Public, Ramsey County, Minnesota.

[Notarial Seal, Ramsey County.]

17 [Endorsed:] Copy. 10925. State of Minnesota, county of ——. District court, — judicial district. Jacob F. Jacobson, plaintiff and def't in error, *vs.* Wis., Minn. & Pac. R. R. Co., defendant and pl'ff in error. I hereby approve the within bond and sureties this 4th day of January, 1899. Chas. M. Start, chief justice supreme court. Due service of the within by copy is hereby admitted, at St. Paul, Minnesota, this 4th day of Jan'y, A. D. 1899. Bond approved as to form and sureties. W. B. Douglas, attorney general. Albert E. Clarke and W. F. Booth, 1104 Guaranty Loan building, Minneapolis, Minn., attorneys for ——.
Endorsed: Filed Jan. 19, 1899. Darius F. Reese, clerk.

18 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1897.

JACOB F. JACOBSON, Complainant,
vs.
THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY and The Willmar & Sioux Falls Railway Company, Defendants.

Before the railroad and warehouse commission of the State of Minnesota.

Petition.

To the honorable the railroad and warehouse commission of the State of Minnesota:

Your petitioner respectfully represents:

1. That he is a citizen and resident of the county of Lac Qui Parle, in the State of Minnesota, and is now and for a long time

past has been engaged in the business of shipping grain,
19 wood and other commodities on and over the lines of the Wisconsin, Minnesota & Pacific Railroad Company in said State.

2. That the said Wisconsin, Minnesota & Pacific Railroad Company is a corporation duly organized and existing under the laws of the said State, and operates lines of railway, with a line extending from the city of Minneapolis, in the county of Hennepin, through the counties of Carver, Sibley, Renville, Yellow Medicine and Lac Qui Parle to the city of Watertown, in the State of South Dakota.

3. That the Willmar & Sioux Falls Railway Company is a corporation duly organized and existing under the laws of the said first-named State and operates lines of railway, one line of which extends from the city of Willmar, in the county of Kandiyohi, through the counties of Chippewa, Yellow Medicine, Lyons, Pipestone and Rock, in the said State of Minnesota, to the line of the State of South Dakota; that the main line of said last-named company connects at said city of Willmar with what is known as the Great Northern system of railways operated by the Great Northern Railway Company, which said system operates lines extending from the city of St. Paul via the city of Crookston to St. Vincent, in said last-named State, and via the city of Breckenridge to the city of Fargo, in the State of North Dakota, and from the city of Fargo to the city of Grand Forks, in said last-named State, and via said city of Crookston to the city of Everett, in the State of Washington, from which last-named city the said Great Northern system has and enjoys traffic connections with the lines of other railway companies whereby it is enabled to haul its freight and passenger trains to points situate upon the Pacific coast; that the said Great Northern Railway
20 Company has traffic connections with the Eastern Railway Company in said State of Minnesota, which last-named company has a line extending from the city of Hinckley therein to the cities of Duluth and Superior, situated respectively at the head of Lake Superior.

4. That at or near the point or station known as Hanley Falls, in said county of Yellow Medicine, the tracks of the lines of the said Willmar & Sioux Falls Railway Company and of the said Wisconsin, Minnesota & Pacific Railroad Company, respectively cross and intersect each other at grade and in such manner as to make it practicable to provide thereat ample facilities by track connections for the transfer from one of the last-named tracks to the other thereof, any and all cars of whatsoever name or character used in the regular business of the said two last-named companies, or either thereof.

5. That no facilities whatever have been provided by either of said last-named companies at or near said station of Hanley Falls, nor do any now exist thereat, whereby cars of any kind or description can be transferred from either of the said two last-named lines to the other thereof, or whereby passengers or freight can be transferred from one to the other of said lines.

6. That it is both practicable and necessary for the interest of traffic and the reasonable and proper accommodation of the citizens of this State using and employing the lines of the said last two named companies respectively, as a means of travel and the transportation of produce and merchandise that ample facilities by track connections for the transfer of any and all cars used in the regular business of the respective lines of the said last-named companies be speedily provided at said station of Hanley Falls, and that
21 the said two last-named companies be required to speedily provide equal and reasonable facilities for the interchange of cars and traffic between the respective lines at the said station and for the receiving, forwarding and delivering thereat of passengers, property and cars to and from their several lines and the lines of other common carriers connecting therewith as aforesaid.

7. That the providing of the said track connections and transfer facilities at the said station will greatly facilitate the traffic in wood, grain and other productions and in merchandise between the numerous stations located on the said last-named lines respectively, which said traffic is now very large and important and carried on at great expense and loss of time, by reason of the want of such transfer facilities at said station of Hanley Falls, and that the providing of such facilities will afford a shorter, more direct, expeditious and less expensive means of shipment of such productions and merchandise between the stations located as aforesaid on said lines.

Wherefore your petitioner respectfully prays that your honorable board will make its order directing and requiring the said Willmar & Sioux Falls Railway Company and the said Wisconsin, Minnesota & Pacific Railroad Company, and each of them, to provide as speedily as may be, and in the manner required by law, at the point of intersection of the respective lines at said station of Hanley Falls, ample and proper facilities by track connections for transferring any and all cars used in the regular business of their respective lines from one to the other of said lines, and to provide equal and reasonable facilities at the said point of intersection for the interchange of cars and traffic between their respective lines, and for the re-
22 ceiving, forwarding and delivering of passengers, property and cars thereat to and from the several lines and those of other companies, common carriers, connecting with the same or either thereof.

(Signed) JACOB F. JACOBSON.

STATE OF MINNESOTA, } ss:
County of Lac Qui Parle, }

Jacob F. Jacobson, being first duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and that the same is true.

(Signed) JACOB F. JACOBSON.

Subscribed and sworn to before me this 27th day of December, A. D. 1895.

(Signed) AMUND HEGNA,

[SEAL.] *Notary Public, Lac Qui Parle Co., Minn.*

23 Before the Railroad and Warehouse Commission of the State of Minnesota.

JACOB JACOBSON, Complainant,
vs.
THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY and The Willmar & Sioux Falls Railway Company, Defendants.

Answer of the Wisconsin, Minnesota & Pacific Railroad Company.

The Wisconsin, Minnesota & Pacific Railroad Company, for answer to the complaint herein, says:

The defendant alleges that its railway has at all times referred to in the petition been operated in connection with a line of railway extending to the cities of St. Paul, Minneapolis and Duluth, in the State of Minnesota, and to all important markets and business centers in adjoining States. That the Willmar & Sioux Falls Railway Company is likewise operated in connection with a line of railway extending to St. Paul, Minneapolis and Duluth, in the State of Minnesota, and to all important markets and business centers in adjoining States. Tariff rates from all points on said lines of railway respectively are reasonable and just, and parties residing along the line of each of said railways respectively would derive no
24 advantage or benefit from the construction of the connecting track as required by the petition. There has been and will be no business requiring the construction of said track or that will gain any saving or advantage by reason thereof.

Further answering, this defendant alleges that its line of railroad referred to in said petition was constructed in all respects in conformity with the obligation and duty imposed by its charter. It acquired title to right of way 100 feet in width in and through the village of Hanley Falls and at the point where it is required to construct such connecting track, under the provisions of the petition herein. It neither has title to nor possession of other land than that included within such right of way at the point in question, such right of way being all that was required for the purpose of constructing and operating its line. A connecting track as required by the petition herein cannot be constructed upon land now owned or possessed by these defendants or either of them. To construct such track the title or right to possess or occupy other or additional lands must be acquired. To construct said connecting track the main track of the line of railway must be cut and switch connections placed therein, thereby increasing the danger of operation. The point where said connecting track is located is about one-fourth of a mile from the nearest station on the line of this defendant, and about one mile from the nearest station on the line of the defendant, The Willmar & Sioux Falls Railway Company. The risk incidental in handling freight will be increased in consequence of the necessity of leaving cars on the side track at such point, remote from any station or watchman.

25 No agreement has been made between the defendants as to the proportion each shall pay of the cost of construction of such connecting track nor of the cost of maintenance thereof, and no agreement has been or can be made between the defendants as to the proportion to be paid by each of the cost of such additional land as will be required upon which to construct said connecting track, or as to the quantity of land that shall be required by each of the defendants respectively for that purpose. There are over five thousand miles of railway in operation within the State of Minnesota. The tracks of the respective lines of railway intersect and cross each other at several hundred points within the State. In some places the point at the crossing or intersection is on the banks of rivers, at the ends of bridges, at other places in rock cuts where the grade of one line is several feet higher than the grade of the other. In many cases there are bridges by means of which one line crosses the track of another. To construct connecting tracks at many points of intersection and crossing within the State would require the expenditure of a very large sum of money, amounting to many thousands of dollars, and of tracks several thousand feet in length, and the acquiring for the purpose of valuable property, in some instances in the business centers of towns and cities in the State.

The Wisconsin, Minnesota & Pacific Railroad Company succeeded to all the charter rights, duties and obligations of the Minnesota Central Railroad Company, incorporated by chapter 2, Special Laws of 1857, extra session, approved May 23, 1857, and the various acts amendatory thereof and supplemental thereto.

26 Wherefore defendant prays that it may be dismissed with costs.

ALBERT E. CLARKE AND
W. F. BOOTH,
Attorneys for the Defendants,
1104 *Guaranty Loan Building, Minneapolis, Minnesota.*

STATE OF MINNESOTA, }
County of Hennepin, } *ss:*

Albert E. Clarke, being duly sworn, says that he is the vice-president of the Wisconsin, Minnesota & Pacific Railroad Company; that he has read the foregoing answer and knows the contents thereof, and that the statements therein contained are true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

ALBERT E. CLARKE.

Subscribed and sworn to before me by the said Albert E. Clarke this 29th day of January, 1896.

[NOTARIAL SEAL.]

W. F. BOOTH,
Notary Public in and for Hennepin County, Minnesota.

27 Before the Railroad and Warehouse Commission of the State of Minnesota.

JACOB F. JACOBSON, Complainant,
vs.
THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY and The Willmar & Sioux Falls Railway Company, Defendants.

Answer of the Willmar & Sioux Falls Railway Company.

The Willmar & Sioux Falls Railway Company for answer to the petition herein:

1st. Admits the allegations of paragraphs one (1), two (2) and three (3) of the petition, and also that at a point about one mile from the station known as Hanley Falls, in the county of Yellow Medicine, State of Minnesota, the tracks of its line and those of the Wisconsin, Minnesota & Pacific Railroad Company cross each other at grade, and that no facilities have been provided by either of said companies, at such point of crossing or intersection, whereby railway cars of any kind can be transferred from the line or tracks of one of said companies to the line or tracks of the other, or whereby passenger or freight cars can be transferred from the line of one road to the line of the other, and that at such point of crossing facilities have not been provided for the transfer of passengers and
28 freight from the cars of one of said companies to the cars of the other.

2nd. Further answering, defendant, The Willmar & Sioux Falls Railway Company, alleges that by its charter it was authorized to construct a line of railway from Willmar, in the State of Minnesota, to Sioux Falls, in the State of South Dakota; that it constructed said line of railway and in all respects complied with and performed the obligations and duties imposed by its charter. It acquired title to right of way one hundred (100) feet in width in and through the village of Hanley Falls, and at the point of such crossing or intersection. It neither has title to nor possession of other land than that included in such right of way, at the point in question. Such right of way was acquired for the purpose of constructing and operating its line, under the provisions and obligations of its charter. The connecting track acquired by the petition herein cannot be constructed upon land now owned by or in the possession of this defendant or upon land owned by and in the possession of the Wisconsin, Minnesota & Pacific Railroad Company. To construct such track the title or right to possess other and additional lands must be acquired. To acquire the land upon which to construct and maintain said track will cost nearly one thousand dollars ($1,000). To construct said connecting track the main line and track of this defendant must be cut and switch connections put in, thereby increasing the danger of operating its railway. The point of crossing or intersection is about one mile from the nearest station on the line of either of said railway companies, parties defendant. The risk

incidental to the handling of freight will be increased in con-
29 sequence of the necessity of leaving cars on the side track at such point, remote from any station or watchman, and it will be impracticable to make transfer of cars at that point, save by the use of an engine kept for the purpose, and a daily expense of from twenty to twenty-five dollars. The transfer of cars from one company to another generally depends upon contract. There is no established custom or usage under which such transfers are made. They are not made by a company when it has cars of its own not in use.

3rd. Further answering, defendant alleges that no agreement has been made between it and the Wisconsin, Minnesota & Pacific Railroad Company as to the proportion each shall pay of the cost of constructing such connecting track, or of the cost of maintenance thereof, and no agreement has been made, nor can be made between this defendant and the Wisconsin, Minnesota & Pacific Railroad Company, as to the proportion to be paid by each of the cost of such additional land as will be required upon which to construct such connecting track, or as to the quantity of land that shall be acquired by each railway company, party hereto, for that purpose. There are over five thousand miles of railway in operation in the State of Minnesota. The tracks of the respective lines of railway in the State intersect and cross each other at several hundred points within the State. In some places the point of crossing or intersection is on the bank of a river, or at the end of a bridge; at other places in a rock cut, where the grade of one line is several feet higher than the grade of the other. In many cases there are bridges by which one line crosses the track of another. To con-
struct connecting tracks at many points of intersection and
30 crossing within the State would require the expenditure of a very large sum of money, amounting to many thousands of dollars, and construction of tracks several thousand feet in length, and the acquiring, for the purpose, of valuable property, in some instances in the business centers of the towns and cities in the State.

4th. Further answering, defendant denies each and every allegation of the petition not hereinbefore specifically admitted to be true.

Wherefore this defendant asks that said petition be dismissed.

M. D. GROVER,
Attorney for Defendant The Willmar & Sioux Falls R'y Co.

St. Paul, Minn., Jan. 7th, 1896.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

E. Sawyer, being duly sworn, says that he is the secretary of The Willmar & Sioux Falls Railway Company, one of the defendants herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

E. SAWYER.

Subscribed and sworn to before me this 7th day of January, A. D. 1896.

C. C. McELWEE,
[SEAL.] *Notary Public, Ramsey County, Minnesota.*

STATE OF MINNESOTA, }
County of Ramsey, } ss:

C. C. McElwee, being first duly sworn, deposes and says that he is a clerk in the office of the general solicitor of the Willmar
31 & Sioux Falls Railway Company; that on the 7th day of January, 1896, he served a copy of the foregoing answer upon Jacob F. Jacobson, by placing same in the post-office at St. Paul, Minn., postage prepaid, and properly addressed to said Jacobson, at Madison, Minnesota.

C. C. McELWEE.

Subscribed and sworn to before me this 7th day of December, A. D. 1896.

J. A. GARDNER,
[SEAL.] *Notary Public, Ramsey County, Minn.*

Testimony Taken Before the Railroad and Warehouse Commission.

Testimony taken before the railroad and warehouse commission, at Hanley Falls, Minnesota, on Tuesday, February 18, 1896.

Present: Gen. Geo. L. Baker, Col. Wm. Crooks, Judge Ira B. Mills, Col. Wm. M. Liggett, Messrs. A. K. Teisberg, Geo. B. Edgerton, W. F. Booth, J. F. Jacobson.

Mr. EDGERTON: We propose to show the necessity at this place for transfer facilities by which shipments over these two different lines of road can be made, and for that purpose and with that object in view, we propose to examine certain witnesses before the commission.

32 S. CHRISTOPHERSON, sworn and examined as a witness, testified as follows:

By Mr. EDGERTON:

Q. Mr. Christopherson, where do you reside?
A. Dawson, Minnesota.
Q. How long have you resided there?
A. Since 1884.
Q. What business are you engaged in and have you been engaged in?
A. Well, it has been somewhat mixed. I have been in the mercantile business, stock business and banking business.
Q. How far is Dawson from here?
A. Twenty-seven miles.

Q. From Hanley Falls to Dawson?
A. Yes, sir.
Q. How long did you say you had lived there at Dawson?
A. Since 1884.
Q. During most of that time you have shipped goods over the St. Louis road?
A. Yes, sir.
Q. Cattle?
A. Well, since 1888 I have shipped cattle.
Q. To what markets have you shipped cattle?
A. I have shipped to Minneapolis markets, St. Paul markets, Omaha markets and Sioux City markets.
Q. How many shippers in cattle are there at Dawson?
A. Well, there are four shippers that has been shipping.
Q. Can you tell me about how many car-loads of cattle were shipped from Dawson to these various markets during the year?
A. Well, I should think we shipped from Dawson probably—this year I don't think we have shipped more than fifty car-loads from Dawson. I think that is about the number, but I am not positive.

33 Q. How much before?
A. Well, in 1888 and 1889 I should thing there was twice that many shipped.
Q. Years prior to that time?
A. I don't know very much about the stock business.
Q. What is your understanding about the business now; is it on the increase or decrease?
A. Well, I think it is on the increase now again; it was on the decrease from 1890 to 1894, but people are going into the stock business more now than——
Q. Is this country up here getting to be more of a stock country?
A. Yes, sir.
Q. Generally?
A. That is, the farmers are talking and also increasing their stock.
Q. Now, what proportion of these fifty car-loads of cattle that have been shipped out of Dawson have you shipped?
A. We have shipped about twenty car-loads the last year.

Railroad commissioners' map of 1896 marked Ex. A for identification, and offered in evidence.

Q. Referring to this map, Mr. Christopherson, will you tell the commission the road you ship your cattle over in going, say to the Sioux City market?
A. Yes, sir; in going from Dawson to Sioux City we go down the M. & St. L. to Hopkins, and then we transfer——
Q. That is near Minneapolis?
A. Yes, sir; then we transfer onto the Omaha road, and go from there to Sioux City on the Omaha.

Q. From there to Sioux City?

A. Yes, sir.

Q. Why don't you transfer at Hanley Falls station instead of going clear over here to Hopkins?

A. Well, for the reason that we have no way of transferring the cars; we have to unload and pay local freight from Dawson to Hanley Falls and then local freight from there to Sioux City.

34 Q. What expense would that be on a car, do you know?

A. I don't know exactly what the difference would be.

Q. But the expense is so great you cannot afford to do it?

A. Yes; and the transferring and unloading and getting them from one yard to the other, and stopping there a long time, probably, is very inconvenient; in fact, it would entail both expense and inconvenience that we can't very well overcome. We have drove cattle down here, and that entails a very large expense and a shrinkage in the cattle; and we have, during the summer time, had to go over people's fields with the cattle.

Q. Can you afford to ship them from Dawson to Hanley Falls and ship them from that point over the Great Northern down to Sioux City?

A. Well, there was times that that probably would be as cheap to us as to go around all this distance, but other times it is practically impossible.

Q. What is the distance to Sioux City by this route from Dawson down to Hanley Falls, and from Hanley Falls, on the Great Northern, down to Sioux City?

A. I think it is 227 miles; I think it is 200 miles from Hanley Falls to Sioux City.

Q. How many hours' travel?

A. The way the freight goes it would take us about fourteen hours.

Q. How many mile's travel is it from Dawson by the route you have to take, over the St. Louis road, to Hopkins station and then transferring on the Omaha road?

A. It is about 132, I think, from Dawson to Hopkins, and the distance from there to Sioux City I am not positive about, but anyway, it takes us from forty-five to forty-eight hours continu-

35 ous, staying on the cars with the cattle, from Dawson to Sioux City by the way of Hopkins.

Q. It takes about three times as long a time to go that way as it would if you could transfer here at Hanley Falls?

A. Yes, sir; in 1888 and 1889 we shipped anyway three-quarters of them around that way.

Examined by Col. LIGGETT:

Q. Are you familiar with the values of cattle throughout the year, in the different markets—the Minneapolis and the Sioux City markets and the other markets you have referred to?

A. Yes.

Q. Why do you ship to Sioux City instead of Minneapolis?

A. Our cattle are mostly stock cattle; we mean by that cattle that are ready for men that have feed and want to fatten them; and that class of cattle we ship down south, down into Sioux City, for instance. They bring better prices there—from twenty-five to fifty cents and $1; they bring a better price down in that city for this reason: that if we ship them into the Minneapolis or St. Paul yards they are either bought by men for their own use or by scalpers that buy in the Minneapolis and St. Paul yards and reship them down into Kansas City or Omaha or some of those cities or other places in Nebraska or Iowa, and resell them either at the yards or to farmers, and of course we all know that makes an additional expense of yardage, feeding and the profit that the second man has got to have on those cattle. Now, the feeding cattle, I will say we wouldn't ship them to Sioux City, because our home market is just as good.

Q. The reason is, you can ship them down there and make
36 by it rather than ship them to Minneapolis and sell them, as the feed is cheaper in Sioux City than it is in Minnesota?

A. Yes, sir.

Q. And you are required to do it on that account?

A. Yes, sir; that is the reason.

Q. What is the freight rate from Dawson to Sioux City?

A. We had to get a stock rate of twenty-five cents a hundred.

Q. What would it be by the other road?

A. I think we made the same rate from here.

Q. Do you complain of the rate?

A. No, sir; it ain't that; I haven't been shipping in later years; it was so inconvenient for us that we practically gave it up.

By Mr. BOOTH:

Q. Anybody else shipping to Sioux City that you know of, from Dawson?

A. Lately?

Q. Yes.

A. No, not the last year.

Q. The year before last?

A. Yes.

Q. How many cars?

A. I couldn't tell you as to that.

Q. Can you tell how many cars have been shipped from Dawson within the last five years, to Sioux City?

A. I couldn't tell exactly how many cars; no, sir.

By Mr. EDGERTON:

Q. Why haven't you shipped more cattle to Sioux City around by Hopkins transfer?

A. For this reason, that our cattle come into Sioux City in bad shape, and sometimes it is impossible to ship them. I think in hot weather it would be impossible to keep them on the train forty-five to forty-eight hours.

Q. Why?

A. Cattle will lie down. I have rode in with the cattle in order to keep them from tramping on one another. After they have been on the cars over twenty-four hours they begin to go down
37 and the lighter cattle will go down and the larger ones trample on them.

Q. Have you ever known death to result on a long trip that way?

A. Yes, sir.

Q. How often does that happen, and how many in your experience?

A. Well, it depends on how good care a man takes of them. I have lost cattle, but not very often.

Q. Is there necessarily a shrinkage in taking a trip of that distance with cattle?

A. Yes, sir; it is great shrinkage going that distance with the cattle on the car.

Q. How much more would the shrinkage amount to than if you could have transfer facilities at Hanley station and on the Great Northern and the trip on the road was only fourteen hours?

A. Well, I weighed my stock at both ends, and I found that cattle would shrink 1,000 pounds going to Sioux City, and going to St. Paul I think we can make it about 500; but of course the St. Paul trip would be fully as long as the other; that is, it would take us fully as long to go from here to St. Paul as it would to Sioux City.

Q. If you had to transfer?

A. Yes.

Q. What, on an average, would that 500 pounds amount to in money?

A. Stock cattle, I suppose, would bring three cents a hundred in Sioux City.

Q. On each car-load that extra shrinkage would amount to what?

A. Amount to about $15.

Q. Now, take into consideration that amount, of about $15 on shrinkage and the deaths that result from a long journey of that kind, what would be the percentage of loss in going to Hopkins station and transferring, to Sioux City?

A. Per cent. on the whole car?

Q. Yes.

38 A. Oh the percentage wouldn't be very large. The deaths, of course—as I say, I haven't had many of those; but the shrinkage is the biggest item, of course, and of course the time; and of course cattle, you know, after they have had that long journey, the shrinkage is bigger—it takes longer to bring them back in shape to sell them; so there is an additional cost at the yard. There should be, anyway, one day's more time. It would take 600 pounds of hay to get them back in somewhat reasonable shape to sell.

Q. Now, then, how many dollars would you estimate it to be, as a loss on each car-load?

A. I should figure about $25.

Q. Does that loss, in going to Hopkins station and down to Sioux City, practically shut you out of the Sioux City market?

A. Yes, sir; it does with me. I gave it up on that account—buying that class of cattle and going to Sioux City.

Q. Is there any other market that you can make money on buying that class of cattle except to ship them south?

A. It is very hard to buy them and make any money on them.

Q. Do you know about the number of car-loads that have been shipped through these other stations—Boyd and Clarkfield and Madison—in your neighborhood there?

A. Well, only as I have seen them going up and down the road. I should estimate each of the four stations would average a car-load a week—each of them.

Judge MILLS: Four car-loads a week, you mean?

WITNESS: Yes.

Gen. BECKER: The year round?

WITNESS: I think so.

39 Q. Now, I wish to call your attention to the matter of posts and wood. Tell us what your experience has been in that respect, whether you are shut out of any market where you could buy wood and posts, etc.

A. That I could only tell you as I have it from dealers.

Q. You have been in business, so that you know generally what the market price is of wood and posts, etc., in that vicinity?

A. Yes, but I haven't handled those; I have bought wood and posts and those things, and inquired about prices, but as from my own experience I have no knowledge of the actual business, only as I have it from dealers.

Q. Don't you know from the information that you have derived on inquiries made what the price of wood and posts are in that vicinity?

A. Yes, sir; I know from inquiries.

Q. Now, I will direct your attention to what is the price, at Dawson, of posts?

A. Cedar posts bring—that is, the small light cedar posts—from eleven to fifteen cents.

Q. Other posts?

A. These cedar posts I am positive of. Oak posts, I am told it costs eighteen cents to lay them down in Boyd. That is the station east of our place, over the Minneapolis & St. Louis road.

Q. Do you know over what railroad they get these posts that they pay eighteen cents for?

A. I was told they were got from the main line of the Minneapolis & St. Louis road.

Q. Do you know what the price is there on that road, on the Minneapolis & St. Louis—the same oak posts that cost you eighteen cents at Dawson?

A. I don't know.

Q. You don't know what the price is, but you know the price of wood on that road there?

A. Yes.

40 Q. What is the price of maple wood there at Dawson?

A. $7 a cord now.

Q. What is the price of oak wood there?

A. We have got no oak wood.

Q. What kind of wood have you got there?

A. Well, mostly maple.

Q. That is $7 a cord?

A. Yes.

Q. What are the number of cords shipped in there to Dawson each year, of wood?

A. Oh, from 1,000 to 1,500 cords, I should think.

Q. You don't know about wood used in these other towns shipped in there?

A. No, sir; only what I have heard from others.

By Judge MILLS:

Q. Now, Dawson is on what is known as the Wisconsin, Minnesota & Pacific?

A. Yes, sir.

Q. What is the character of the country along through the stations that you have named?

A. It is rolling prairie.

Q. No timber?

A. No, sir; only on the Minnesota and a little bit on the ——

Q. Not sufficient for the wants of the people there?

A. No, sir.

By Mr. BOOTH:

Q. Where does that maple come from?

A. One of the dealers has been getting most of his from Waconia.

HANLEY MUNSON, sworn as a witness, testified as follows:

Examined by Mr. EDGERTON:

—. You live at Clarkfield?

A. Yes.

Q. How long have you lived there?

A. Why, I have lived there since 1880—sixteen years.

41 —. What business are you engaged in?

A. I have been farmer and doing different kinds of work—buying stock.

Q. Is that a prairie country around Clarkfield?

A. Yes, sir.

Q. No timber?

A. No.

Q. You have been shipping cattle, haven't you, more or less, from Clarkfield?

A. Yes, sir.

Q. About how many car-loads of stock have been shipped from Clarkfield?

A. Well, the last year it was around twenty-seven car-loads; more than half of the stock, I should judge, came out of that territory; some was brought by the Milwaukee and Great Northern and a part by the Northwestern.

Q. Those three roads?

A. Yes.

Q. So that this road loses a good deal of that business around Clarkfield?

A. Yes.

Q. Now, this is the Wisconsin, Minnesota & Pacific; that is the correct name of that road, isn't it? That is part of the St. Louis system?

A. Yes.

Q. How many car-loads have you shipped yourself over that?

A. I shipped fifteen car-loads, I believe, last year.

Gen. BECKER: Where were they shipped to?

WITNESS: St. Paul or Minneapolis.

Q. You didn't ship any to Sioux City?

A. Oh, no; I used to do that. I had to quit that business because that cost so much—the expense and everything cost so much.

Q. Could you make money by shipping south if you could get transfer facilities at Hanley Falls?

A. Oh, yes.

Q. Why could you get more for your stock by shipping south than north?

42 A. The cost wouldn't be so much, and besides a good many of the cattle die and get bruised on the cars, because they are so long on the car.

Q. Can they afford to pay more in Iowa for the kind of cattle that you have been shipping than they can in Minneapolis or St. Paul?

A. Yes.

Q. Why?

A. The reason is they got plenty feed for that kind of cattle. They have got cheap feed down there.

Q. Their feed costs less there and these cattle have to be fattened after they are shipped?

A. Yes.

Q. Before they are fit for killing. Now, how many car-loads of wood are shipped into Clarkfield?

A. I isn't in the business; there is other men—I think there is a man—he isn't here yet.

Q. About how much wood?

A. I think myself there was seventy-six car-loads, but I isn't positive—last year.

Q. What kind of wood do you use there?

A. We use oak and hard maple.

Q. What does wood cost you there?

A. Well, I think from six to seven dollars. I don't know how much they cost the dealers.

Q. How much do oak posts cost you there?

A. Oak posts are fifteen cents apiece.

Q. How much for cedar posts?

A. Well, from a shilling to fifteen cents; that depends on the size.

CHARLES BROWN, sworn and examined as a witness, testified as follows:

By Mr. EDGERTON:

Q. Do you know where the Wisconsin, Minnesota & Pacific
43 Railway Company intersects the Willmar & Sioux Falls Railway Company? Do you know where those two roads cross?

A. Yes.

Q. Where is it?

A. Why, it is——

Q. Near the village of Hanley Falls?

A. Yes.

Q. Where do you reside?

A. I reside here in Hanley Falls.

Q. How long have you resided here?

A. Eight years next month.

Q. What business are you engaged in here?

A. Cattle and hogs.

Q. Shipping of cattle and hogs?

A. Yes.

Q. How long have you been engaged in that business here?

A. I have been engaged in that business ever since I have been here. Before I came here I was in that business.

Q. And shipping cattle and hogs over these two different lines of road?

A. Yes.

Q. To what markets?

A. To St. Paul, Sioux City, Chicago, Omaha.

Q. Have you acquainted yourself with the market price of cattle and hogs of these various markets during that time?

A. Yes.

Q. Have you shipped cattle and hogs to Sioux City, Iowa?

A. Yes.

Q. From Hanley Falls over the Great Northern or the Willmar & Sioux Falls?

A. To Sioux City I go over the Great Northern and S. C. & N.; of course, they are combined.

Q. It is the Willmar & Sioux Falls, isn't it? It is part of the Great Northern system?

A. It is part of the Great Northern system that connects with the S. C. & N. road.

Q. Have you shipped much over that road?

A. Yes, sir.

44 Q. Why do you ship over that road?

A. Well, because we can get there a little quicker than we can on the other road.

Q. How much quicker?

A. In fact, I have never been around this road myself. My brother went around once and he said he didn't want to go again.

Q. How long does it take to ship from Hanley Falls over the Willmar & Sioux Falls road from here?

A. Well, sir, we generally start here at 6.30 and we are due at 8.50 in Sioux City; 8.50—that will be fourteen hours—about that. It is 8.50 in the evening, same day. We start here at 6.30 in the morning.

Q. Why do you ship that way instead of to St. Paul and Minneapolis?

A. Most of the cattle we get here, of course, are stock cattle and go that way, but the fat cattle and hogs mostly go to St. Paul. Of course, with the markets so different—if the markets are better for Sioux City we ship our hogs that way, but that don't happen very often. We have our home market. Hogs are worth just as much in St. Paul as they are in Sioux City. Take cattle that have to be fed before they are fit for beef—the feeders are generally a little better and the stock cattle a great deal better for the reason that stock cattle—the reason they call them stockers, they are these small cattle—thin cattle. The Iowa men buy them and feed them large quantities of corn. They buy these cattle to eat off the cornstalks. It doesn't cost much to winter them. They get their land so they can cultivate it in the spring. They are called stockers. And the next grade heavier are called feeders. They are put in the feed-yard and fed corn. Of course, we can get more for them there because the farmers there have the feed and have their corn-

45 stalks, but here in St. Paul they haven't got the feed nor the cornstalks to feed with. You can get a better price—feed is cheaper and the stockers bring more because they can winter the stockers; they eat off of their coarse feed.

Q. That is the reason why the Sioux City market is valuable?

A. Why, it is because they run from twenty-five to forty cents higher for stockers and feeders in Sioux City than in St. Paul.

Q. Well, tell us how much on an average you would get on a car-load of stock shipped to Sioux City?

A. Twenty-five cents a hundred; that would make a difference of about $100 a car. Figure 20,000 pounds for a car-load at twenty-five cents a hundred. Figure that yourself.

Q. Something about $50. Well, now, how much more shrinkage would there be on a car-load going from here around by the way of Hopkins station to Sioux City than it would from this place to Sioux City, in your judgment?

A. I don't know just how long it would take to go around that way.

Q. Suppose it took from forty-four to forty-six hours to go that way—about three times as long to go that way as it would, I think, from here to Sioux City.

A. There would be quite a shrinkage.
Q. Give us your best judgment on that.
A. Well, I think it would be, maybe, from five to seven hundred pounds more shrinkage on the car going that way.
Q. Would there likely to be more deaths going that distance?
A. Of course, the longer cattle is on the car the more apt they are to get down and get trampled to death.
Q. What in your opinion would be the damage to a car-load by your going around by Hopkins station to Sioux City?
46 A. It will run from twenty-five to forty dollars; somewheres in there; that would be the difference on a car.
Q. Now, then, you have been in business here a number of years but you have never shipped around that way yourself?
A. No, sir.
Q. By Hopkins station?
A. No, sir. My brother——
Q. Where did he ship them from?
A. I think they were shipped from Clarkfield; never shipped from here.
Q. Where you have the preference you always ship on this road?
A. Yes, sir, on the Great Northern.
Q. On the Willmar & Sioux Falls?
A. It is called the Great Northern—Willmar & Sioux Falls division.
Q. Is there anything else you wish to say about this matter—I mean about the stock?
A. I was just up here for you fellows to say.
Q. Have you had any experience yourself in the handling of wood and posts?
A. Yes, sir, we handle wood.
Q. What is the price of wood there?
A. Maple wood is $5.20.
Q. Where do you get your maple wood?
A. From Howard lake, Smith lake, and along on the main line of the Great Northern, and we get some up in by Foley—up in there.
Q. What road is that on?
A. That is on the Great Northern system.

Gen. BECKER: Is that the price it is sold at by the dealers?
WITNESS: Yes, sir, that is what we sell wood at—5.20.
Gen. BECKER: Good body maple wood?
47 WITNESS: We are not making very much at it at that. There are three or four wood dealers here, and our profits are not very high.
Q. Why don't you buy on the St. Louis road?
A. Because we can't get it quite so cheap on the St. Louis road. We had prices on the St. Louis road, and it would make a difference of about thirty-five to forty cents a cord by the time we got it here.
Q. Well, is there a great deal of wood along the St. Louis road?
A. I don't know. I should think that it was pretty well cleared

out—not so much as there used to be. In fact, it is better on the Great Northern road than the St. Louis.

Q. Is there a great deal of wood on the Great Northern road?

A. Yes, there seems to be a good deal of wood there.

Q. What do you pay for your wood on the Great Northern road?

A. Wood at Howard lake costs us $3.25 for maple, and up in by Foley and at Howard lake, that is four-and-a-half rate from Howard lake, and up on the other, on the five-and-a-half rate, its costs us from $2.75 to $2.85.

Q. Do you know the price of wood on the Great Northern road, where it is cut?

A. Well, this here is where it is cut and loaded on the car—what we pay for it.

Q. Just what you have stated?

A. Yes, sir.

Q. Well now, on the other road?

A. Well, I had the prices—they was higher, and so I didn't take care of them at all. There was a man down here—I think it was either Green Isle or Young America—gave me the price-list on wood, but I forget what the prices are. I know it was cheaper on the Great Northern road.

48 Q. And that is why you purchase on that road?

A. Yes. We buy wood where we can buy it the cheapest.

Q. What are posts worth here? In the first place, what are oak posts worth where you buy them?

A. Well, there is a difference in where you get them. They generally charge about four to five cents for oak posts; it depends on the grade of the post.

Q. And what do you sell them here for?

A. We sell them here for eight to ten.

Q. Those are first-class oak posts?

A. Yes, sir; good posts.

Q. What about the cedar posts, what do they cost?

A. We don't handle them.

Q. Tamarack posts; do you handle them?

A. We don't handle any tamarack posts.

Q. Do you handle any other kind of posts except oak posts?

A. We have some wood that some farmers—I don't know what they do with it—we sell it, but the wood—it is eight-foot wood, and tamarack. What they do with it we don't go out to find out.

Q. And sell it—how much a cord?

A. $5 a cord.

Q. This gentleman wants to know how many pieces there are in a cord.

A. It depends on the size of the wood. It runs all the way from seventy-five up to 150, but then when we get 150 some of them are very small pieces. They cut the wood eight feet long and put them in from—well, from ten inches through down to three inches through.

Q. Are there a great many posts in and around this country now?

A. Quite a few.

Q. More than formerly?

A. Yes, I guess there is—more pastures made.

49 Q. On account of more pastures being made?

A. Yes.

Q. More stock-raising?

A. No, sir; it is because they have to pasture now. They used to let the cattle run where they wanted to, but they have to build pastures now for them.

Q. It becomes necessary to use more posts than it did formerly?

A. Yes, sir.

By Mr. BOOTH:

Q. You are in business here in Hanley Falls?

A. Yes, sir.

Q. Are you carrying on business at any other place?

A. No, sir. I have a farm up here, that is all.

Q. But your shipments are from Hanley Falls?

A. Yes, most of them; mostly from Hanley Falls.

Q. Most of your shipments are from Hanley Falls?

A. About three-quarters of my shipments are. My brother and I work together. I have a brother in Granite Falls. We are in company and we ship together.

Q. Do you fill any orders here?

A. I fill orders from here to St. Paul, and he will fill in from Granite to St. Paul. Of course I couldn't tell, but I should say about three-quarters, or more than that, would be from Hanley Falls. I buy some east and west; then we ship from Granite Falls, too.

Q. You start those shipments from Hanley Falls—the cattle to go over the Great Northern to Sioux City?

A. Yes, sir: some at Granite and some here. Sometimes we have part of a load in Granite and have a load in here.

Q. Now, shipments you make from Granite Falls come down on the Great Northern?

A. Yes, sir.

Q. And go right through to Sioux City without changing cars?

A. Yes, sir.

50 Q. And your shipments from here, I suppose, are bought up within a radius of a few miles and driven here and loaded on the cars here?

A. We buy anywhere from fifteen to sixteen miles east and eighteen to twenty west.

Q. Radius of about fifteen miles; drive them here and ship them from here?

A. Yes.

MARTIN E. TEW, sworn and examined as a witness, testified as follows:

By Mr. EDGERTON:

Q. What business are you in?

A. I am editing a paper at Clarkfield.

Q. How long have you edited a paper there at Clarkfield?

A. Two years, nearly.
Q. How far is Clarkfield from Hanley Falls?
A. Twelve miles.
Q. Are you posted upon the number of car-loads of wood that have been shipped into Clarkfield during the last two years?
A. Not the last two years; the last year.
Q. How many car-loads have been shipped in there?
A. Seventy-six cars.
Mr. BOOTH: How did you get the information?
Q. How do you know?
A. I got the information from the agent at the station.
Mr. BOOTH: He told you how many?
WITNESS: Yes, sir.
Mr. BOOTH: It is only a little village, isn't it?
WITNESS: It has about 400 inhabitants.
Q. How many did he say?
A. Seventy-six cars. A car-load averaging ten cords per car—that would be 760.
Q. What kind of wood is it?
51 A. That I don't know, but I presume it is mixed wood—maple and oak and other kinds.
Q. What does wood cost you there a cord—last year?
A. The average for the year I couldn't state, but the present time it is $6.40 a cord.
Q. Do you know anything about posts? Did you answer about that?
A. No, I didn't.

Gen. BECKER: What is the rate on wood from here to Clarkfield?
WITNESS: That I couldn't say.

Q. Do you know the amount of coal?
A. Yes, sir.
Q. How much coal has been shipped in there?
A. Thirty-seven car-loads.
Q. How many tons in a car-load will it average?
A. The average given to me was twenty tons per car-load.
Q. What kind of coal was this?
A. All kinds; hard coal and soft coal.
Q. What does hard coal cost you there a ton?
A. Common stove coal costs $8.50 a ton.
Q. What does soft coal?
A. Soft coal, I think, is $6.50 at the present time. I wouldn't say for certain.
Q. Do you know the price of coal here—same kind of coal?
A. No, I don't.

Judge MILLS: Where is your hard coal shipped from?
WITNESS: That I don't know. We have a gentleman here, though, who can inform you on that subject.

J. F. JACOBSON, sworn and examined as a witness, testified as follows:

By Mr. EDGERTON:

52 Q. You reside at Madison?
A. Yes, sir.
Q. How long have you resided there?
A. I have resided there since 1885.
Q. Madison is on the Wisconsin, Minnesota & Pacific?
A. Yes, sir.
Q. How many miles from Hanley Falls?
A. I think it is 36 miles.
Q. What is and has been the price there lately for good maple wood?
A. $7—$7.50.
Q. Per cord?
A. Yes; $6.80 it was a while.
Q. Now, just show the commission on the map here—give them the distance to the other roads from Madison. Now, how far is it from Madison over to Bellingham on the Great Northern road?
A. It is thirteen miles.
Q. What is the same kind of wood worth over there?
A. It is worth $5.20 and $4.80, and it has varied about twenty to fifty cents since last fall.
Q. Are you familiar, Mr. Jacobson, and have you been for some time, with the price of wood from there up to Bellingham?
A. Yes, sir.
Q. And that is the difference—$2 a cord?
A. No.
Q. About $2?
A. It has been from $1.40 to $2.20. The price varies according to the primary markets on this road or on the Great Northern.
Q. If you could have transfer facilities at this station so as to have access to the primary markets on the Great Northern road would there be any reason why you couldn't get wood just as cheap at Madison as they do at Bellingham?

Mr. BOOTH: I think that is a conclusion that should be drawn by the commission.

53 Q. You could buy it just as cheap at the primary markets as they can there at Bellingham?
A. Yes, sir.
Q. Now, how many cords of wood are shipped into Madison during the year?
A. The principal wood dealer in town was to have been here this morning, but he has been sick for some time and he was unable to come, so he sent me a statement showing——
Q. You know of your own knowledge how much wood is shipped in their yard there?
A. Yes, sir. I know.
Q. State to the commission the number of cords.

A. It has been from 900 to 1,300 cords of wood the last six or seven years.

Q. Per annum?

A. Per annum. This man shows exactly how much he has sold each year.

Q. What are his figures?

A. For 1893, 841 cords and 750 tons of coal; 1894, 492 cords and 692 tons of coal; 1895, 776 cords of wood, 691 tons of coal. I will say in addition to that that we have three other dealers in Madison. Now, I wish to explain in regard to the falling off of the shipments in 1894 as compared with 1893 and 1895. In 1894 the wood supply on this road was very scarce——

Judge MILLS: Which road do you refer to, Mr. Jacobson?

WITNESS: When I speak of this road I mean the Minneapolis & St. Louis—was very scarce, and it was very hard to get any good wood at all, and it is hard to get as good wood on this road as it is on the Great Northern road. They sold their wood in Louisburg and Bellingham from $1.70 to $2.25 per cord less than we could sell it and make any kind of profit in Madison. The cost at the station, freight included, was from $1.70 to $2.25 for 100 during the
54 several months of 1894. So it was impossible—in fact, a good many in Madison would go and haul their own wood from Louisburg and Bellingham (which is twelve or thirteen miles distant from here) and haul it clear across the country instead of buying it at our own town. They are both on the Great Northern.

Q. And that accounts for the falling off of the shipments in 1894?

A. Yes, sir.

Q. Of wood brought into Madison on the St. Louis road?

A. It is equally true of the shipments of 1895. There is more wood used in that country now than there was five years ago because the settlement is larger. We sold more wood in Madison than we do now, because the wood is cheaper on that road, and consequently the supply is largely from the Great Northern road on account of price.

Q. I will ask you this: Does the Great Northern make a lower rate?

A. No, sir.

Q. The rate is the same?

A. The rate is practically the same.

Q. Then it is due to the cost of the primary market, is it?

A. Yes, sir.

Q. And that is the reason you are shut out of the primary market on the Great Northern road?

A. Yes, sir. It is impossible to transfer from one car to the other. It would be impossible to do it at the present time.

Judge MILLS: You would have two local rates to pay?

A. We would have two local rates to pay, whereas if we got a connection we would have one single rate under the new law.

Q. Is there anything about coal that you wish to speak about?

A. If we had transfer facilities here we would be nearer
55 Duluth by, I think, seventy-five miles, than we are by going around Minneapolis and St. Paul, and how much the difference would be, of course, I am unable to say.

Q. That can be figured from the transfer sheets.

A. Yes. Now, as to the rate of wood that is charged on this road, or either road, there has been no complaint that I have heard of from dealers of late years of any excessive charges. I think the charges are reasonable.

Q. What are people here complaining of?

A. We are shut out of the primary market. The wood on this road is almost exhausted.

Q. On the St. Louis?

A. On the St. Louis—is almost exhausted; that is, close to the road.

Q. How is the supply on the other road?

A. The supply on the other road is a great deal better, on the different branches.

Q. For years you think the supply will be abundant, do you, on the other road?

A. Yes, sir. I wish, also, to speak in regard to the posts.

Q. Tell us about the price of posts there at Madison.

A. Oak posts are worth from sixteen to nineteen cents.

Q. The same kind of posts that Mr. Brown said was eight to ten here at Hanley Falls?

A. Yes.

Q. Do you know of any other reason why you are shut out of the Sioux City market on account of stock, and out of the Great Northern market on account of wood and posts, than the fact that you haven't transfer facilities here at Hanley Falls?

A. No, sir.

Q. That is the only reason?

A. That is the only reason. If we could transfer here we would be on an equal footing with the people that are living at
56 those points, except as to the additional freight from here to Madison, of course. I wish to call your attention to the fact that I have made thorough inquiries in regard to the post question, which is now getting to be a serious question, inasmuch as the farmers are going into the stock business and have to do more fencing than they have heretofore, and that item will be a very large one. It is almost impossible to obtain posts on this road, while it is abundant on the other road.

Q. So that on that account, in your judgment, it is necessary to have transfer facilities to do business?

A. I think it is a moral crime for the people of this part of the country that it should be continued any longer. I think the people feel they are entitled to it, and I think both roads ought to concede it even without fight.

Q. Do you know anything about the stock?

A. Very little.

Q. Do you know how many posts have been shipped into your place—Madison?

A. No, sir; but it is a large quantity. The man that had that thing in charge got sick and he was unable to come, consequently I am unable to give you the figures.

Q. I wish you would state any facts you know, in your judgment, with reference to this inquiry as to whether business requires the building of this Y or transfer facilities.

A. Figuring up the number of cords of wood that is used between here and the State line, at Hazel Run, Clarkfield, Boyd, Dawson, and Marietta, I think we can show there is at least 5,000 cords of wood used annually, and there would be a saving to the people along this road (at these different stations) of at least $1.25 to $1.50 for every car-load of wood that is used in that country, and at least ten cents on every oak post used in that country.

57 Q. Ten cents a post?

A. I mean eight cents a post.

Q. How is it about the posts that you get on the Great Northern; are they a better class of posts than on the other?

A. It is almost impossible to obtain them on this road—oak posts—at all, and on the other road they seem to be abundant.

Q. Anything else that you think of you want to state to the commission?

A. I think not.

Q. In your judgment, is it practicable to build a Y there?

A. Yes, sir.

Q. At the intersection of these two roads at Hanley?

A. Yes, sir. If a railroad engineer would go on the stand and say it was impracticable at this point, I think he should be discharged. I don't think any road would require his services any further.

By Mr. TEISBURG:

Q. Do you say that with reference to the right of way they own or simply with reference to the lay of the ground—the boundary lines?

A. I don't know; I am not acquainted here. I know the land can be bought at a reasonable rate and if they wanted to they could soon acquire right and it could be done without any great expense as far as the right of way is concerned.

By Mr. EDGERTON:

Q. If the commission should remove the legal objection in the way of granting this order, are you people here willing to secure the additional right of way upon which to build these transfer facilities?

A. I think if those roads would put the Y in and transfer facilities that that wouldn't be a bar. I think, while the people are not very wealthy up here, we could build that much railroad ourselves, even in these hard times.

58 Q. I didn't speak of the railroad; I simply speak of the right of way. In their answer they have set up that the commission have no right to do this because they haven't the necessary right of way upon which to build this Y?

A. Yes, I have read that. I have got a copy of the answer. If there is no other objection—that is, a technical objection, why the citizens of these different villages will remove it inside of twenty-four hours.

Q. Is there anything further you wish to state to the commission in regard to the necessity for this Y being put in at this place?

A. Not at present, because the other witnesses can speak definitely. I can only say in a general way.

Q. What is the radius from this station here on the St. Louis road to the intersection—crossing of these two roads?

A. It is about forty rods, I should judge. I have walked over the ground three or four times.

Judge MILLS: You mean on the Wisconsin, Minnesota & Pacific?

Mr. EDGERTON: On the Wisconsin, Minnesota & Pacific road and the intersection with that road of the Willmar & Sioux Falls Railway Company.

WITNESS: Yes.

Q. It was about forty rods?

A. Yes; I haven't measured it, but it is about that.

Q. That is your best judgement?

A. Yes.

Q. Now, state anything else you wish to state.

A. From the other depot down on the Great Northern it is a little further.

Q. How far?

A. Well, I walked over the ground—it is about sixty or seventy rods.

59 Q. Sixty or seventy rods from that intersection to the station on the Great Northern?

A. Yes; it may, of course, be further. Of course, I simply judge the distance by looking at it.

Mr. EDGERTON (to Mr. Booth): Have you a plat of the lay of the ground here?

Mr. BOOTH: Yes, sir.

Mr. EDGERTON: Would you be willing to let us see it?

Mr. BOOTH: Certainly.

WITNESS: And it is almost a dead-level ground. The crossing is almost—I was looking at it—it looks almost dead-level.

Q. Right at the crossing?

A. Yes.

Q. Without those transfer facilities, then, you are shut out of the Sioux City market at Madison in regard to stock and out of the primary market on the Great Northern road in regard to wood and posts?

A. Yes, sir.

By Mr. BOOTH:

Q. What business are you in, Mr. Jacobson?

A. Principally farm machinery; dealer in farm machinery and also shipper of grain. I am a partner in one of the elevators or farmers' warehouses there—independent warehouse at Madison—have been for the last eight or nine years.

Q. Not in the railroad business?

A. No, I am not in the railroad business.

—. Nor in the wood and coal business?

A. Not now, to any great extent; only ship very limited quantities.

Q. You spoke something about hauling wood from Bellingham and Louisburg to Madison.

A. Yes, sir.

Q. Where is the primary market for wood for the people of Bellingham and Louisburg?

A. It is on the Great Northern system. It is from Eagle
60 Bend—get some wood clear up on Eagle Bend and along those two or three lines up there. I am not able to give you the stations now.

Q. Where is Eagle Bend?

A. It is on the Great Northern system in Todd county, if I am not mistaken.

Q. Where is the primary market for wood on the Great Northern road that comes to Hanley Falls?

A. It is the same country. They all go through Willmar. They divide on the Louisburg road and go by the way of Benson and then go by the way of Willmar and this way. That would be about the same distance from the primary market as Bellingham, with the exception of about twenty miles. That would be about fifteen or twenty miles further than it would be for the primary market, if we could go by the way of Hanley Falls as they go by the way of Benson.

Q. Is the same primary market for posts as well as for wood?

A. Yes, sir.

Q. Do you know anything about the supply of wood and posts in that primary market except what you have been told?

A. Well, I have been all through that country, and the supply is very large. In fact, there are dealers that find it very difficult in that country to dispose of their wood at any price, and they are as much interested in our market—to find a market for their wood—as we are in finding a place to buy our wood.

Q. Where is that?

A. That is through Todd county and Washington county and Stearns county and these other counties through which these lines intersect.

Q. In regard to the stock—are you acquainted with the stock business?

A. Very little, sir. I know one of our dealers that has had
61 the same experience that has been related on the stand by Christopherson on the number of car-loads shipped at our

place, for the reason that the shipping is very poor in comparison with the stock yard at Dawson, so the number of cars from our place is not as great as it is from Dawson.

Q. Your information is derived largely from the dealers?

A. Yes, sir; so far as the stock is concerned, entirely.

Q. And so far as wood is concerned?

A. No, the price of wood is not derived from the dealers at all, but from actual buying myself.

Q. Buying as a consumer, I suppose, not as a dealer.

A. No.

HENRY ISAACSON, sworn and examined as a witness, testified as follows:

By Mr. EDGERTON:

Q. Where do you reside?

A. Hazel Run.

Q. What road is that on?

A. Minneapolis & St. Louis.

Q. How far from Dawson is that? How far from this place?

A. Six miles.

Q. Which way?

A. West.

Q. Now, what business are you in there?

A. Been in the general merchandise business.

Q. How long have you been in there?

A. Nine years.

Q. Do you know anything about the quantity of wood that has been shipped in there?

A. Not a great deal. I have been handling wood this winter—handled some in 1891.

Q. Well, tell us, as near as you can, how much has been shipped in there.

62 A. In 1891 there was fourteen or fifteen cars sold right along. I don't know just how much has been handled, though, winters before that. This winter I handled twenty-seven cars.

Q. Haven't any timber growing there; have it either hauled in or shipped in?

A. Yes.

Q. Why is it there is so little wood in there now?

A. Because we can't compete with them on the Great Northern here.

Q. What is the difference in price?

A. Well, twenty-five, thirty-five and forty cents a cord. At present we can't get any wood on this road—not unless we sell it for $6.75.

Q. What is the nearest station on the other road to you?

A. Granite Falls.

Q. How far is Granite Falls from where you live?

A. Twelve miles.

Q. What have you paid for wood there?
A. I have been getting it down at Waconia for $3.75.
Q. What road is that on?
A. On this road.
Q. You paid $3.75 there. What have the charges been for shipping it up there?
A. I don't remember now what the last freight was.

Gen. BECKER: There has been no change, I suppose, in the rate?
WITNESS: I think I have a freight bill with me. My brother has been paying the freight and I haven't paid much attention to it. Rate $4.25. On ten cars it amounted to $14.60. We got a little special rate on it which helped us out a little.
Judge MILLS: Where is it shipped from and to?
Mr. EDGERTON: From Waconia.
Judge MILLS: Is there a special rate on that?

Q. What is the difference between the regular rate and that?
A. I don't just recollect now.
63 Q. Can you afford to pay the regular rates—the price you have to pay at Waconia—the regular rates, and ship it in there?
A. No, sir, because we have to come here and get it; here or at Granite.
Q. Can't compete with them?
A. No.
Q. Any posts been shipped in there?
A. No posts shipped in; can't get ahold of any; they are getting them here cheaper.

By Gen. BECKER:

Q. How much was the rate on the ten cars of wood?
A. $14.60.
Q. Isn't that the regular rate?
A. No, I think that is a special rate we got on it.
Q. Are those rates what they give other people?
A. I don't know exactly. My brother was attending to it, so I didn't have much to do with it. I don't just know what it was. That is what I understood from him.
Q. What did you sell that wood for?
A. I sold it for $5.60, most of it.

By Mr. EDGERTON:

Q. That is forty cents a cord more than it is sold for in Hanley Falls?
A. Yes.

Gen. BECKER: Sell wood at $5.20?
WITNESS: Yes. They claim it is not as good on this road.
Mr. BOOTH: Which isn't so good?
WITNESS: The Minneapolis & St. Louis isn't as good. They haul from Hazel Run right along. They claim they get better wood there. We can't get good wood on this road.

Q. How far do they haul wood?
A. About three miles right through our town.
Q. Is this wood that is shipped into this place shipped
64 over the Great Northern system?
A. Yes, sir.

By Mr. BOOTH:

Q. You are in the wood business there, are you?
A. Yes, sir; I have been this winter.
Q. What proportion of wood that is used in Hazel Run comes in on the Minneapolis & St. Louis and what proportion is brought from Hanley Falls?
A. The biggest part of it from here.
Mr. EDGERTON: Hauled by teams?
WITNESS: Yes.
Q. You compete with the wood that comes up from Hanley Falls, do you?
A. We can't.
Q. Don't you sell any?
A. We sell a little.
Q. That which you do sell you sell in competition with the wood here at Hanley Falls?
A. No, sir, you can't do it—be money out.
Q. Do you mean on the wood you sell?
A. Yes, sir, to compete with them here.
Q. I didn't understand that you lost anything on that ten cords which you sold there?
A. No, I didn't lose on that.
Q. You don't mean to say that you carry on the wood business and lose money right along on it?
A. Well, no. If I should sell at the same price here I would be money out.
Q. You wouldn't expect to sell it at the same price here, would you?
A. No, we get it in on the other road. At present I can't get any wood on this road.
Q. Don't you get wood still on this road?
A. I do, but I can't now, any amount of wood.
Q. Is all the wood that is being used in Hazel Run now being brought from Hanley Falls?
A. Mostly, and Granite Falls.
65 Gen. BECKER: Why can't you get it on this road?
WITNESS: They say they haven't got any.
Q. Did you hear the statement made by Mr. Jacobson in regard to the amount of wood that was used at his point?
A. A little, yes.
Q. Did you hear where he said that wood came from?
A. I don't just recollect. I ain't acquainted where they get the wood from.
Mr. EDGERTON: You stated to the commission that you had to sell for forty cents more a cord than they sold it here.

WITNESS: Yes, sir; around that.

Q. Is it your opinion that if a Y was put in here at Hanley Falls that all wood used west of here would come by the Great Northern road?

A. I think it would.

Q. So there wouldn't be any wood trade on the Minneapolis & St. Louis or the Wisconsin, Minnesota & Pacific west of Hanley Falls?

A. Hardly.

Mr. EDGERTON: Is that because they haven't got good wood?

WITNESS: Yes, sir.

F. A. BELTZ, sworn and examined as a witness, testified as follows:

By Mr. EDGERTON:

Q. Where do you reside?

A. Boyd, Minnesota.

Q. On the St. Louis road?

A. Yes, sir.

Q. This Wisconsin, Minnesota & Pacific road?

A. Yes.

Q. How far from this station?

A. About eighteen miles.

Q. Which way?

A. West.

66 Q. This side or on the other side of Clarkfield?

A. The other side.

Q. West of Clarkfield?

A. West of Clarkfield.

Q. Is it the next station west of Clarkfield?

A. Yes.

Q. What business are you in?

A. I am in the general mercantile business.

Q. Now, tell us, if you know, about how many cars of wood are shipped into that town.

A. I don't know positively how many cars there is, but I should think there was about between six and seven hundred cars a year.

Q. Do you have to depend entirely for fuel on what is shipped in there from outside?

A. Yes, sir.

Q. Have no timber or coal around there?

A. No timber, no, sir.

Q. Now, about the posts. Are there a great many posts shipped in there?

A. There is about three or four car-loads a year, I suppose.

Q. You have to fence here in this country now, don't you?

A. We do, yes, sir.

Q. The law requires you to fence your stock?

A. I suppose it does, yes.

Q. Now, tell us what the price of good oak posts is there at Boyd.

A. It costs about eighteen cents to lay them down.

—. Other kind of posts, say cedar posts, ship in any of that kind?

A. I used to handle posts—used to be in the timber business, and we sold cedar posts all the way from ten to fifteen cents.

Q. Now, what does wood cost a cord there?

A. I think they are selling it now at—hard maple at $6.40.

Q. For hard maple?

A. Yes.

Q. Mixed wood—do you know what the price is?

A. I couldn't say anything about that.

67 Q. Is there anything further upon this question that you wish to speak about to the commission?

A. No, I don't think there is.

By Mr. BOOTH:

Q. Where does that wood come from that you get at Boyd?

A. I think they get the most of it at Green Isle and Waconia.

Q. On the line of the Minneapolis & St. Louis?

A. Yes, sir.

By Mr. EDGERTON:

Q. Do you know anything about the quality of wood that is shipped into this country on the other road—the Great Northern?

A. No, I do not.

Q. You don't know whether there is any difference?

A. I don't know anything about that. I have heard them say it is a good deal better wood on the other road.

Q. And still for the wood on this road you have had to pay at this station $6.40 a cord?

A. Yes.

Col. LIGGETT: Do you find it any difficulty to purchase wood on this road?

WITNESS: They claim it is hard to get wood; and they claim they can't get any good wood.

Mr. EDGERTON: I would like to know if it is more difficult to get good wood on this road now than it was two or three or four years ago.

WITNESS: I should think it would be.

Mr. BOOTH: Do you know anything about it?

WITNESS: All I know about it is that timber must be getting scarcer down on this line.

Mr. BOOTH: That is your general impression?

WITNESS: Yes.

Mr. BOOTH: You don't know anything about it personally?

No answer.

68 MARTIN E. TEW, recalled, testified as follows:

By Mr. EDGERTON:

Q. Are you the editor?

A. Yes.

Q. Have you made inquiries with reference to wood—whether wood could be purchased up at Waconia along the St. Louis road, in that neighborhood?

A. Yes, sir.

Q. Upon your investigation what did you find in reference to your ability to purchase wood there?

A. I found from conversation with wood dealers there that they are unable to get wood at prices anywhere near what they are on the Great Northern road.

—. What is that? On account of the scarcity of the wood?

A. On account of the scarcity of the wood on this line of road as compared with wood on the Great Northern line.

Q. Now, the fact that you have to pay more for wood on this line of road—the St. Louis road and the Wisconsin, Minnesota & Pacific—does that prevent you competing with stations like Cottonwood and other stations on the Great Northern road?

A. Yes, sir. I would say that so far as competition with Cottonwood, Granite Falls and Hanley Falls is concerned, we can't compete with them. People living three or four miles south of us, going eighteen miles, we lose all that trade; not only wood trade but merchandise. People go to Cottonwood to buy wood in the fall, and not only buy wood, but also buy merchandise. People living south of us and west of us go to Granite Falls. People living east of us go to Hanley Falls.

By Mr. BOOTH:

Q. So that your town gets its supply from other sources?

69 A. I wouldn't say that people in town go to Cottonwood or Granite Falls or Hanley Falls to buy their wood. People living in town buy their wood at home, but farmers living as near to Clarkfield as four miles go to Cottonwood, Granite Falls and Hanley Falls to buy their wood.

Q. Travel what distance to get their wood?

A. About 12 miles.

Q. Travel eight miles further than it would be from their homes to your station, Clarkfield?

A. Yes, sir. And, of course, farmers living just two miles go to Cottonwood to buy their fuel. They travel ten miles instead of two miles to get their fuel.

Q. Do you know anything about the price of wood?

A. Wood at Hanley Falls has been sold for $5.20 a cord.

Q. I mean these outside places where they go?

A. Cottonwood?

Q. Yes.

A. I think the price is about the same as it is there, being on the

same road as this. I know, however, it is much cheaper than at Clarkfield.

Q. How much at your place?

A. I think the price is about the same as here. There is very little difference, if any.

Mr. EDGERTON: Tell the commission your investigation in reference to posts.

WITNESS: From inquiries from merchants and wood dealers and others there at Clarkfield, I learned that the post trade is very slim. First, owing to the fact that we can't get posts of good quality on this line of railroad, and, furthermore, because we can't compete with prices at those towns I have mentioned before. I have been told that one or two of our business men couldn't get posts here at Hanley Falls unless they hauled them by team to Clarkfield, so as to be able to sell. And farmers who are now going into the
70 stock business, to a large extent. A Y at this place would largely benefit not only the stock business, but it would attract farmers who buy posts and other things.

S. CHRISTOPHERSON, recalled, testified as follows:

By Mr. EDGERTON:

Q. You have made inquiries about the purchase of maple wood at Waconia and other stations, have you not?

A. I have been in the habit of doing the correspondence for one of our wood dealers for the last two or three years, and I have seen letters from wood dealers at Waconia and also at Green Isle, on this road, saying they couldn't furnish him with maple wood.

Q. When you say this road you mean the Wisconsin, Minnesota & Pacific?

A. Yes. They sent him mixed wood, such as birch and oak, to fill his order for maple.

Q. What reason did they give that they couldn't furnish the maple wood?

A. That it was not in the market—couldn't buy it. I have written letters for him on the other road—on the main line of the Minneapolis & St. Louis—for maple wood to fill his order that couldn't be filled on the line between here and Minneapolis.

Q. I will ask you if Waconia has been the best market on the Wisconsin, Minnesota & Pacific for maple wood.

A. This party I am speaking of is getting nearly all of his wood from Green Isle or Young America, but Waconia is the principal place where he has got his wood.

71 W. B. THOMASON, sworn and examined as a witness, testified as follows:

By Mr. EDGERTON:

Q. You are in the lumber business at Clarkfield?

A. Yes, sir.

Q. How long have you been in the business?
A. Five months at Clarkfield.
Q. You have lived in this part of the country for some time?
A. No, sir; Minneapolis.
Q. You have lived in the State for quite a while?
A. Yes, sir.
Q. How long have you been in the lumber business?
A. Altogether, about four years.
Q. What can you tell us about the price of posts there at Clarkfield?
A. My experience is very limited, but I can state the price I bought a car-load of posts for when I bought out C. A. Smith at Clarkfield on the 1st day of October. There was about a car-load of posts on hand. I bought everything at cost price at Clarkfield. The four-inch posts—which is the post generally used—cedar is all I have—cost me, at wholesale price, ten cents.
Q. What is the price of the same posts here at Hanley Falls?
A. One of our residents at Clarkfield last year bought a cord of posts, eight feet long—I will state that the cedar posts handled at Clarkfield are six and a half feet—bought a cord of posts at Hanley Falls and hauled them for $5. That is an average of 100 posts. These posts are tamarack, cedar and oak mixed. Another resident of Clarkfield contemplates—and is present to-day—contemplates hauling his posts from here this year—Mr. Munson, who has already testified. The posts cost me $6.50; cedar posts cost me twice as much in Clarkfield as it does here.
72 Q. Was that the wholesale price that you paid?
A. Yes, sir.
Q. And you came here and bought it of a retail dealer for five cents?
A. Yes; on an average of about 100 posts.
Q. Those that you bought and paid ten cents—what did you retail them at at Clarkfield?
A. Twelve cents.
Q. So that there is a difference of seven cents?
A. Yes, sir.
Q. On a post?
A. Yes.

(By Gen. BECKER:)

Q. Is that the regular price for cedar posts here—five cents?
A. For cedar, entirely; it is tamarack, cedar and oak mixed.

(By Gen. BECKER:)

Q. Can you give me the price?
A. No, sir; I simply have the one case to speak of. I haven't been here long enough to say as to the general trade. I know what it cost me, and I know I can't compete, because Mr. Munson is going to haul from Hanley Falls; and I can't compete. I can't do it and sell them to Mr. Munson or any one else and make anything on it; that is, pay for the drayage; and these men that haul them

have their own teams; the drayage is certainly a good deal more than the freight on the posts from here to Clarkfield, if we could transfer them.

Q. So you are driven out of that business unless you can get transfer facilities here?

A. Yes.

Q. So it is absolutely necessary, if you carry on this business, that there should be transfer facilities put in here at this crossing?

A. Yes, sir; as I believe.

By Mr. BOOTH:

73 Q. Would it be possible for you, at the present time, Mr. Thomason, to put down a car-load of posts at Clarkfield for less than ten cents apiece?

A. If we could transfer them; yes, sir.

Q. No; under the present condition.

A. No, sir; I think not. Not for the posts they can haul from here.

Q. What is the freight on posts from here there?

A. I can't tell you that.

Q. You don't know then, whether you could put on a car-load of posts for less than you actually gave for your posts last fall or not?

A. If they can sell them for five cents apiece here, the freight isn't five cents here to Clarkfield, it stands to reason that I could, though I can't give any figures.

Q. So that your purchase of posts at ten cents was rather more than you could put the same post in for today?

A. Not on the same road; no, sir.

Q. You say you can buy them here for five cents and it doesn't cost five cents to get them up there?

A. I will take that back. I could get them for less than five cents, but at the same time a man to compete with the Hanley trade would have to pay a local freight from Hanley to Clarkfield.

Q. Your illustration was an extreme illustration at present prices?

A. No, I think not, under the circumstances. I am buying by car-load lot, shipped on the St. Louis road, and pay ten cents a post for my posts—for four-inch posts—and the posts, I am giving you to understand, are from four to twelve inches through, and they are sold by the cord. If I can buy the cedar posts, shipped on the St. Louis or Great Northern, in Hanley, and then have to pay the local freight, it would be largely greater, for the distance run, than it would be from Minneapolis here.

74 Q. Oh, yes, of course, but would it be possible to buy there and sell for less than ten cents?

A. I think it would, but not enough greater to warrant my competing with the trade.

By Mr. JACOBSON:

Q. There wouldn't be anything in it for you, would there?

A. No, sir.

Q. If you should buy this eight-foot wood up on this road and ship to Hanley Falls, taking it out of one car at one of their yards, and taking it over there by team and loading it onto this road, doing it yourself, or hiring it done, wouldn't that about make the difference that you have spoken of?

A. I can't answer as to figures. I don't want to say positively, that I can't get them for less than ten cents (if I may take the other statement back) but I will say positively that I couldn't get them at a figure so as to sell them at the same price they can be sold at in Hanley Falls, and make a cent. That is simply what I am looking for—the almighty dollar, not love.

Q. You are looking to sell them at the same price as here?

A. And deducting the extra freight.

By Col. LIGGETT:

Q. You don't know what these $5 posts cost the dealers here?

A. No, sir.

Q. You are in the lumber business?

A. Yes, sir.

Q. What is your experience competing with the lumber trade in Hanley Falls?

A. I think that there is no difference on that, seeing that both come direct from Minneapolis on either road, I don't think the freight rates make any material difference. I don't think the coal and lumber business can be cited as a comparative case. It is simply where they have to transfer from one road to the other.

75 Q. This difference in price; does it extend to coal as well as wood?

A. Not on the freight from Duluth, I believe.

Q. You don't think a Y would help the trade here?

A. No, not as to coal.

Q. Nor the lumber?

A. No, sir.

Q. The reason of that is, in your opinion, that the primary market is the same in each case?

A. Yes, sir.

Mr. JACOBSON: We are not making a point on the coal question because our experience is this: Wherever the primary market is the same, why, we have nothing to say, because the roads then in self-defense have got to compete with one another.

Col. LIGGETT: You make no question about the reasonableness of the freight charge?

Mr. JACOBSON: There is no question about that. If the same joint rate was established between the two roads I don't — there would be any complaint as to rates. Anybody who has investigated them would call them reasonable.

Col. LIGGETT: You would be equally served?
Mr. JACOBSON: Yes.

J. F. JACOBSON, recalled, testified as follows:

By Gen. BECKER:

Q. To make this complete you would have what they call a joint freight rate?
A. Yes.
Q. Suppose the Y was in?
A. Yes.
Q. Your remedy would not be satisfactory without a joint freight rate?
A. No, sir.
Q. What do you understand by a joint freight rate?
A. A reasonable rate.
76 Q. You say the rates are reasonable now?
A. Yes.
Q. What is a through joint rate?
A. It would be the same as one road.
Q. What is that?
A. Two hundred miles distance; 100 miles on one road and 100 miles on the other road, would amount to the same as 200 miles on the same system. We not only pray for a railroad connection (a Y) but we also pray for a through joint rate and a reasonable rate. We don't ask anything unreasonable.
Q. Your idea is that the transfer should be made without any cost to freight?
A. I am not prepared to state that that would be true, but I think it should. If it was not true and if that is not reasonable the commission has a right to make that a reasonable rate under the law.
Q. I am simply asking for information.
A. That is my understanding of it. I have given this question a good deal of thought. We are not asking for an unreasonable joint rate. If we could get that rate we will be satisfied. The difference would be so small we could easily stand the difference. It would $1 a car—it may be fifteen cents a cord; we would call that a good deal of relief from the present situation.

Col. WILLIAM CROOKS, sworn and examined as a witness, testified as follows:

Examined by Mr. EDGERTON:

Q. Colonel, you are familiar with that plat there?
A. Yes; that is the plat showing the two roads.

Map marked Exhibit B offered and received in evidence.

77 Q. Have you made an investigation to see how much of this land at the crossing was owned by the different railroads?

A. This plat shows the right of way of these two railroads at this point at Hanley, as far as it goes.

Q. Do you know what land is owned by the different railroad companies there at the crossing?

A. Yes. This land which is shown inside of the red lines here are the depot grounds, the station grounds and the right of way of the W. M. & P.—the Wisconsin, Minnesota & Pacific.

Q. That is all owned by them?

A. Yes, inside of the red lines.

Q. Who owns this land here?

A. I don't know. I think it belongs to the Townsite Company. I am so informed, but to my knowledge I don't know.

Q. That is the land outside of the red line?

A. Outside of the right of way line. The red line shows the right of way and depot grounds of the Wisconsin, Minnesota & Pacific. The yellow line shows the depot grounds and the right of way of the Great Northern road or Willmar & Sioux Falls.

Q. Now, Colonel, in order to put in a Y there, would it be necessary to have any more land than by that plat appears to belong to the two different roads?

A. Yes.

Q. How much?

A. Well, that would depend entirely on what kind of a Y you would put in there. Now, working a single Y here wouldn't be a good thing. It isn't a good thing anyway. We generally like to use two Y's so we can get in on either side. But as a last resort, a single connection could be put in and made to work, but not advantageously.

Q. Couldn't that be put in on the land of either com-

78 pany?

A. No, not entirely; partially on the land of each company; partially on land not owned by either.

Q. What would be the expense of securing sufficient land to put in a single Y and a double Y?

A. I couldn't answer that question.

Q. You know about how much additional land you would need, don't you? Only get enough room for a track.

A. In a tract fifteen feet wide would give them trackage for a single track. That is to say, if they should crowd it with a ten-degree curve. If they should use a sixty-degree curve it would take a good deal more land than it would take at a ten-degree curve. That would be a question, to make it do that. You could do it approximately on a map of this kind, although the map doesn't run far enough that way to get in a sixty-degree.

Q. What is the angle of intersection?

A. It would be eighty degrees.

Judge MILLS: How long a strip would you need, Colonel?

WITNESS: I calculate that a ten-degree curve put in and connecting track would require about 1,100 feet.

Col. LIGGETT: The whold length of the Y?

WITNESS: Yes. And I should judge, approximately that would be outside of the right of way four or five hundred feet. Now, this I am not giving you as exact figures.

Col. LIGGETT: What would a six-degree curve?

WITNESS: A six-degree curve would throw it very much further into the map. It wouldn't take very much more land of the right of way of either company, but it would take much more land
79 from private parties outside. Instead of getting about 1,100 feet you would get nearly 2,000 feet—between 1,900 and 2,000 feet, total length of track, as against, probably, ten or eleven hundred feet with a ten-degree curve.

Col. LIGGETT: For the business that would be likely to be done here, for the transfer of single cars at a time, would a ten-degree curve answer the purpose?

WITNESS: Perfectly well, sir, but it is not the way to do business.

Col. LIGGETT: Not the way you would like to do it?

WITNESS: No.

Mr. BOOTH: How would it be in regard to the operation in switching? Is it cheaper with a single or double Y?

WITNESS: Double Y, of course. You are not going over your ground twice, that is all. I don't know what the volume of business would be there. Of course that would be an important factor in determining what would be necessary in order to do the business in a fairly economical manner.

Mr. EDGERTON: I would like to know what the additional expense would be in transferring a car from your road to the other road, or from the other road to your road.

Gen. BECKER: Suppose the Y was in?

WITNESS: I don't know, sir.

Gen. BECKER: You don't know what a reasonable charge would be for that—what they call switching charges.

WITNESS: Probably $1 a car; perhaps more. It is not the easiest place in the world to make this kind of a transfer. The only track that can be handled easily is the one that would be in here. That would run into the bottom or river.

80 By Mr. EDGERTON:

Q. When you speak about putting one in there, do you refer to a single Y?

A. Yes.

Q. What, in your judgment, would be the expense of putting in a single Y in that angle?

A. What would it cost?

Q. Yes.

A. I think it would cost probably about $1,500.

Q. Do you mean in addition to the land you would have to purchase?

A. Yes. I am talking about the track now.

Q. Have you examined the ground yourself?

A. Oh, I know it.

Q. You are thoroughly acquainted with the topography of that?

A. Yes, That is why I say that this is the practical way to do it, if it is done at all.

Mr. BOOTH: When you said you thought that 400 feet would be the amount required outside of the respective right of ways of the different companies, that was for the single Y?

WITNESS: Entirely.

Q. In case a double Y should be put in how much additional would that require?

A. A very great addition. It all depends on the degree of curvature you use in regard to putting in these Y's. As I said before, with a ten-degree curve you would be getting in a great deal easier, and, of course, with much less land. The amount of land taken from either right of way wouldn't be much.

Q. In case of a double Y how much should you think would be required outside of the right of ways?

Mr. JACOBSON: We don't care anything about a double Y. We don't ask for it.

81 Mr. BOOTH: But Col. Crooks said it was a great deal cheaper to operate a double Y than it is a single Y.

Mr. JACOBSON: If you want to put in a double Y you can. If we get a single Y, and you want to put in a double Y, we will consent to it.

Mr. BOOTH: It may be a question who is going to pay for it. I simply want to know how much land would be required for the other Y in case of a double Y—outside of the right of ways. How many hundred feet outside of the right of way should you think?

WITNESS: To put in the other one would be very difficult. You would have to compound to get away from the bridge. Their bridge is too long for us to get in a practical curve. Now you have to compound to get out of that, and that would throw you a great deal further west than you could by getting in the single one. You see we have got a bridge right west of us here and they have got a bridge right north of us. Our bridge is further off than theirs, a great deal. So far as our bridge is concerned, I think we can get out of the way. We can't carry the Y across the bridge—it wouldn't be good sense to do it. I think it will be very difficult. Then again, if you take the corresponding angle of eighty degrees on this side, we should have to come in here to the passing track and put in a cross-over to get into the main track, which is unsafe and undesirable. Another thing, you would get in the ravine, bringing it down to the river here and it would be expensive in that case, because you would have to provide for the natural drainage. That would have to be done by proper culverts, either piping or otherwise, to get in there. Those are the objections to it so far as that is concerned. It can be practical, of course, but the

82 expenditure of money, but I think it is going to be expensive. The unexpensive one will be the single Y.

Mr. BOOTH: In other words, the cheaper one to operate would be the most expensive in the beginning?

WITNESS: I think it would.

Before the Railroad and Warehouse Commission of the State of Minnesota.

JACOB F. JACOBSON, Complainant,
vs.
THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY and The Willmar & Sioux Falls Railway Company, Defendants.

Order of Railroad and Warehouse Commission.

The complaint of John F. Jacobson came on to be heard before the railroad and warehouse commission of the State of Minnesota on Tuesday, February 18th, 1896, at Hanley Falls, Minn., all of the members of said board being present.

83 The Wisconsin, Minnesota and Pacific Railroad Company and the Willmar & Sioux Falls Railway Company, each appeared by their attorney, W. F. Booth. George B. Edgerton appeared for the complainant, John F. Jacobson.

The following named witnesses were sworn and examined as witnesses in support of the allegations of the complaint of the said John F. Jacobson:

S. Christopherson, Hanley Munson, Charles Brown, Martin E. Tew, John F. Jacobson, Henry Isaacson, F. A. Beltz, W. B. Thomason and William Crooks. All of said witnesses having been called on part of complainant, the defendants offering no evidence.

After hearing the testimony of said witnesses we find the following facts to be admitted or proven:

That the lines of the two defendant railroad corporations intersect at Hanley Falls in the State of Minnesota; that the Wisconsin, Minnesota and Pacific Railroad Company is now, and for a long time prior to the filing of the complaint herein, has been operated in connection with a line of railway extending to the cities of St. Paul, Minneapolis and Duluth in the State of Minnesota, and to the various markets and business centers in adjoining States.

That the Willmar & Sioux Falls Railway Company is likewise operated in connection with a line of railway extending to St. Paul, Minneapolis and Duluth in the State of Minnesota, and to Sioux City, Iowa, and various markets and business centers in adjoining States.

That the complainant John F. Jacobson is a citizen and resident of the county of Lac Qui Parle and State of Minnesota, and is now, and for a long time past, has been engaged in the busi-

84 ness of shipping grain, wood and other commodities on and over the lines of the Wisconsin, Minnesota and Pacific Railroad Company, in the State of Minnesota; that the said Wisconsin, Minnesota and Pacific Railroad Company is a corporation duly organized, created and existing under the laws of the State of Minnesota, and has been for several years past; that said line of railroad extends, with its connecting lines and under the same management, from the city of Minneapolis, through the counties of

Carver, Sibley, Renville, Madison and Lac Qui Parle to the city of Watertown in the State of South Dakota; that the Willmar and Sioux Falls Railway Company is a corporation duly organized and existing under the laws of the State of Minnesota, and operates lines of railway, one line of which extends from the city of Willmar, in the county of Kandiyohi, through the counties of Yellow Medicine, Lyon, Pipestone and Rock in the State of Minnesota, to the line of the State of South Dakota, thence southerly to Sioux City, Iowa, and the main line of said last-named company connects at said city of Willmar with what is known as the Great Northern system of railways, operated by the Great Northern Railway Company, which said system operates lines extending from the city of St. Paul via the city of Crookston to St. Vincent, in said last-named State, and via the city of Breckenridge to the city of Fargo, in the State of North Dakota, and from the city of Fargo to the city of Grand Forks, in said last-named State, and via said city of Crookston to the city of Everett in the State of Washington, from which last-named city the said Great Northern system has and enjoys traffic connection with the lines of other railway companies, whereby it is enabled to haul its freight and passenger trains
85 to points situate upon the Pacific coast; that said Great Northern Railway Company has traffic connections with the Eastern Railway Company in said State of Minnesota, which last-named company has a line extending from the city of Hinckley therein to the cities of Duluth and Superior, situated respectively at the head of Lake Superior.

That at the station known as Hanley Falls in said county of Yellow Medicine, the tracks of the lines of the said Willmar & Sioux Falls Railway Company and of the said Wisconsin, Minnesota and Pacific Railroad Company, respectively cross and intersect each other at a grade and in such manner as to make it practicable to provide thereat ample facilities by track connections for the transfer from one of the last-named tracks to the other thereof, any and all cars of whatsoever name and character used in the regular business of the said two last-named companies, or either thereof.

That no facilities whatever have been provided by either of said last-named companies at or near said station of Hanley Falls, nor do any now exist thereat, whereby cars of any description can be transferred from one to the other of said lines.

That the farmers along the line of the Wisconsin, Minnesota and Pacific Railroad Company raise now, and have been raising, a great many stock cattle; that is to say, cattle that are ready to be fed and fatte-d for market; that the natural markets for such cattle are St. Paul and Minneapolis, Minnesota, and Sioux City, Iowa; that in some seasons the market for stock *it* better at one point than the other, on account of the supply of feed being more plentiful and cheaper at one point than the other, and such stock
86 can be sold at the best advantage in the market having the largest and cheapest supply of feed.

That in order to ship from stations on the line of the Wisconsin,

Minnesota and Pacific railroad to Sioux City, Iowa, there being now no transfer facilities at Hanley Falls, it is necessary, and has been for a long time past, to ship cattle to Hopkins station, within a few miles of Minneapolis, and there transfer to the Chicago, St. Paul, Minneapolis and Omaha Railroad Company, for transportation to said Sioux City; that the distance from Hanley Falls via the Wisconsin, Minnesota and Pacific railroad and its connections to Sioux City, Iowa, is 380 miles, and the distance from said Hanley to said Sioux City, Iowa, via the Willmar and Sioux Falls Railway Company, and its connections, is 181 miles, and that in shipment of stock over the longer line they are kept much longer on the road than they would be if they could be transferred at Hanley Falls and shipped over the shorter line which would be established if transfer facilities were provided at that point, and that stock shipped by the longer route lose considerable more by shrinkage than they would could they be shipped by the shorter line, and by the establishment of transfer facilities at Hanley Falls, between Wisconsin, Minnesota and Pacific Railroad Company and said Willmar and Sioux Falls Railway Company; the shippers and cattle-raisers residing along the line of the said Wisconsin, Minnesota and Pacific Railroad Company west of Hanley Falls would have the advantage of two markets for said stock.

We also find that in addition to the freight charges on both roads, the expense of transferring the cattle from one road to the
87 other by unloading and reloading the same, would be so great as to make it impracticable and impossible to ship cattle in that way so as to make any profit in buying and shipping the same.

We also find that at the stations of Dawson and Clarkfield, Madison and Boyd and other stations on the Wisconsin, Minnesota and Pacific Railroad Company all wood and posts have to be shipped from a distance; that thousands of cords of wood are consumed in said towns annually; that the evidence shows that there is a larger supply of wood along the line of the Great Northern system, of which said Willmar and Sioux Falls railway is a part, than there is along the line of the Wisconsin, Minnesota and Pacific railroad, and its connections, and wood is cheaper on the line of said Great Northern system, of which the Willmar and Sioux Falls is a part, than on the line of the other system, of which the Wisconsin, Minnesota and Pacific Railroad Company is a part, and if proper transfer facilities existed at Hanley Falls, it could be obtained and in larger quantities and at less expense than it now costs.

And we find that on account of there being no transfer facilities at said station of Hanley Falls, people living on one line of road are practically excluded from the markets of the other line of road on account of the extra expense and inconvenience of transferring goods, wares, merchandise and cattle by unloading and reloading.

We also find that the following is a proper, feasible and practicable location of curve for track connections between the main tracks of said railroad companies:

From a point in the center line of the main track of the Wisconsin,

Minnesota and Pacific Railway Company, 479 feet westerly
88 from the point of intersection of the main tracks of said railroads with foresight on point of intersection of said tracks, run a curve 573.7 feet radius to the right for 778.6 feet, ending at a point in the center line of the main track of the Willmar and Sioux Falls Railway Company, 463.3 feet southerly from said point of intersection.

We, therefore, find as conclusions of law from the foregoing facts, that it is both practicable and necessary for the interest of traffic, and the reasonable and proper accommodation of the citizens of this State using and employing the lines of the said defendant corporations as a means of travel and the transportation of produce, coal and merchandise, that ample facilities by track connections for the transfer of any and all cars used in the regular business of the respective lines of the said two defendant companies, *to* be provided at said station of Hanley Falls, and that a commercial necessity exists therefor.

It is therefore ordered, that the Wisconsin, Minnesota and Pacific Railroad Company and the Willmar and Sioux Falls Railway Company, on or before August 1st, 1896, furnish ample facilities by track connection between the tracks of said roads, where the same intersect each other at or near the station of Hanley Falls in Yellow Medicine county in this State, by the construction of a track of the same g*uag*e of the tracks of said companies, commencing at a point in the center line of the main track of the Wisconsin, Minnesota and Pacific Railroad Company, 479 feet westerly from the point of intersection of said tracks of said railroads, with foresight on point of intersection of said tracks, run a curve 573.7 feet radius to the right for 778.6 feet ending at a point in the center line of the main track of the Willmar and Sioux Falls Railway Company
89 463.3 feet southerly from said point of intersection, and furnish the same with the necessary and proper switches at each end to transfer cars from one road to the other.

Dated June 19th, 1896.

By the commission:

[SEAL.] A. K. TEISBERG, *Secretary.*

Before the Railroad and Warehouse Commission of the State of Minnesota.

JACOB F. JACOBSON, Complainant,
vs.
THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY and The Willmar & Sioux Falls Railway Company.

Appeal of Wisconsin, Minnesota & Pacific Railroad Company from Order of Commission.

90 To the railroad and warehouse commission of the State of Minnesota, and to Jacob F. Jacobson, complainant in the above-entitled proceeding.

GENTLEMEN: Please take notice that The Wisconsin, Minnesota and Pacific Railroad Company, one of the defendants in the above-entitled proceeding, hereby appeals to the district court in and for Lac Qui Parle county, State of Minnesota, the same being the district court of the twelfth judicial district, and being the district court of the county in which the complainant resides, from that certain order made and entered in the above-entitled proceeding by said railroad and warehouse commission on the 19th day of June, 1896, directing said defendants to provide transfer facilities by track connection where their two lines of road intersect at the village of Hanley, State of Minnesota, and from each and every part of said order.

THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY,
By ALBERT E. CLARKE AND
W. F. BOOTH, *Its Attorneys.*

Dated July —, 1896.

91 Before the Railroad and Warehouse Commission of the State of Minnesota.

JACOB F. JACOBSON, Complainant,
vs.
THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY and The Willmar & Sioux Falls Railway Company, Defendants.

Appeal of Willmar & Sioux Falls Railway Company.

To the railroad and warehouse commission of the State of Minnesota, and to Jacob F. Jacobson, complainant in the above-entitled proceeding.

GENTLEMEN: Please take notice that The Willmar & Sioux Falls Railway Company, one of the defendants in the above-entitled proceeding, hereby appeals to the district — in and for Lac Qui Parle county, State of Minnesota, the same being the district court of the

twelfth judicial district, and being the district court of the county in which the complainant resides, from that certain order made and entered in the above entitled proceeding by said railroad and warehouse commission, on the 19th day of June, 1896, directing said defendants to provide transfer facilities by track connection
92 where their two lines of road intersect at the village of Hanley, State of Minnesota, and from each and every part of said order.

THE WILLMAR & SIOUX FALLS
RAILWAY COMPANY,
By M. D. GROVER, *Its Attorney.*

Dated July 5, 1896.

STATE OF MINNESOTA, }
Lac Qui Parle County. }

District Court, Twelfth Judicial District.

In the Matter of the Appeal of The Willmar & Sioux Falls Railway Company and The Wisconsin, Minnesota & Pacific Railroad Company from the Order of the Railroad and Warehouse Commission.

John F. JACOBSON, Respondent,
vs.
THE WILLMAR & SIOUX FALLS RAILWAY COMPANY and THE Wisconsin, Minnesota & Pacific Railroad Company, Appellants.

Stipulation as to Evidence in District Court.

93 It is hereby stipulated and agreed by and between the parties of the above-entitled action that the said cause be tried in January or February at the city of St. Paul, at such time as shall be convenient to the Hon. Gorham Powers, judge of said district.

It is further stipulated that said cause shall be submitted at the April, A. D. 1897, term of the supreme court.

It is also stipulated that the testimony of the witnesses taken upon the former hearing of said cause before the railroad and warehouse commission be read and received in evidence upon the trial in court, with the understanding that either party shall have the right to introduce such other evidence as they deem necessary, if material.

Dated December 18th, A. D. 1896.

H. W. CHILDS,
GEO. B. EDGERTON,
Attorneys for Complainant.
A. E. CLARKE,
W. F. BOOTH,
Att'ys for W., M. & P. R. R. Co.
M. D. GROVER,
Att'y for Willmar & S. F. R'y Co.

94 JACOB F. JACOBSON, Plaintiff,
vs.
THE WISCONSIN, MINNESOTA AND PACIFIC RAILROAD COMPANY and The Willmar & Sioux Falls Railway Company, Defendants.

Hearing before Hon. Gorham Powers, J., at St. Paul, Minnesota, on January 23rd, 1897.

Albert E. Clarke, Esq., appeared as counsel for the defendant, The Wisconsin, Minnesota and Pacific Railroad Company.

Hon. M. D. Grover appeared as counsel for the defendant, The Willmar & Sioux Falls Railway Company.

Hon. H. W. Childs, attorney general, appeared as counsel for the plaintiff, and Hon. Geo. B. Edgerton appeared of counsel for plaintiff.

The defendant, The Wisconsin, Minnesota and Pacific Railroad Company, owns the line of road upon which Hanley Falls is situated, originating at Watertown, South Dakota, and extending from that point easterly, into the State of Minnesota to Morton, at which point it connects with the Minneapolis and St. Louis road, which owns the line of road from Morton to Minneapolis; the connection is of such a character that it constitutes physically, one straight line of road from Watertown to Minneapolis. And, by virtue of a traffic and operating agreement, through trains are run, although the ownership of the two lines aforesaid *are* entirely independent.

That the Willmar and Sioux Falls Railway Company's
95 road is operated by the Great Northern Railway Company; and the line formed by the Wisconsin, Minnesota and Pacific Railroad Company and the Minneapolis and St. Louis Railroad Company are competitors with the Willmar and Sioux Falls road for business originating at, and west of Hanley Falls, destined both to Minneapolis and St. Paul markets, and destined to Omaha and Sioux City.

That the Minneapolis and St. Louis Railroad Company connects at Merriam junction with the "Northwestern" system, which runs direct to Omaha and Sioux City, and has a traffic connection with them for the transportation of shipments originating at, and west of Hanley Falls to Omaha and Sioux City.

That the Minneapolis and St. Louis railroad also connects at Fort Dodge, Iowa, with the Illinois Central railway, which runs to Sioux City; that the Minneapolis and St. Louis railroad connects at Des Moines, Iowa, with the Chicago, Rock Island and Pacific road, which runs direct to Omaha; and the joint line composed of the Minneapolis and St. Louis Railroad Company and the Wisconsin, Minnesota and Pacific Railroad Company has a traffic agreement and tariff with the Rock Island Company from Hanley Falls and points west to Omaha.

That the tariff on stock shipments from Hanley Falls and points west, and contiguous territory, to Omaha and Sioux City, is the same on lines of both of the defendants to this proceeding.

(The above facts are admitted by the plaintiff for the purposes of this trial.)

The Willmar and Sioux Falls Railway Company is organized under the general laws of the State of Minnesota to construct a line railroad from Willmar, in the State of Minnesota to Sioux
96 Falls in the State of South Dakota (with leave to refer to the charter on file in the office of the secretary of state), which line was constructed and completed in the year 1888, crossing the railroad of the Wisconsin, Minnesota and Pacific Railway Company at Hanley Falls, which last-named road was constructed some years prior to the Willmar and Sioux Falls road. That it owns no equipment, locomotives or cars. The line is operated, that is to say, the Great Northern Railway Company is lessee of the St. Paul, Minneapolis and Manitoba Railway Company, runs its locomotives, trains and cars over the line of railroad of the Willmar and Sioux Falls Railway Company under a contract arrangement with that company, by which the Great Northern Railway Company maintains and keeps in repair the line of railroad of the Willmar and Sioux Falls Railway Company, and accounts to the Willmar and Sioux Falls Railway Company for the net earnings on account of its line.

(The above facts are admitted by the plaintiff for the purposes of this trial.)

The Wisconsin, Minnesota and Pacific Railroad Company was originally incorporated by the name of the "Minnesota Central Railroad Company" under and by the provisions of chapter 2, Special Laws, 1857, extra session, of the State of Minnesota, approved May 23rd, 1857, and the various acts amendatory thereof and supplemental thereto.

The name was subsequently changed, pursuant to acts of the legislature, to the "Wisconsin, Minnesota and Pacific Railway Company."

(The above facts are admitted by the plaintiff for the purposes of this trial.)

97 It is admitted by the defendants, that the road that runs through Hanley Falls is now operated by the Wisconsin, Minnesota and Pacific Railroad Company.

It is agreed by and between the parties that, pursuant to the written stipulation heretofore made, all the evidence which was offered and received before the railroad and warehouse commission upon the hearing of this proceeding before the commission shall be, and is, hereby admitted and considered as in evidence upon this trial, including the order made by the commission and the exhibits referred to by such evidence. (Transcript of the same produced and marked Exhibit "A.")

It is agreed by and between the parties that the crossing at Hanley Falls is "at grade."

It is admitted by the plaintiff that the Minneapolis and St. Louis Railroad Company and the Great Northern Railway Company have track connections and transfer facilities in the city of Minneapolis between their respective lines.

98 STATE OF MINNESOTA, }
County of Yellow Medicine. }

District Court, Twelfth Judicial District.

JACOB F. JACOBSON, Complainant,
vs.
THE WISCONSIN, MINNESOTA AND PACIFIC RAILROAD COMPANY and The Willmar and Sioux Falls Railway Company, Defendants.

Findings and Order for Judgment.

This proceeding was commenced upon the petition of Jacob F. Jacobson, the complainant, made and presented to the railroad and warehouse commission of the State of Minnesota, and it comes to this court by an appeal on the part of the defendant companies from an order of said commission dated June 19th, 1896, and signed in behalf of said commission by its secretary, A. K. Teisberg. A trial of said cause upon said appeal was had by and before this court at St. Paul, Minnesota, on January 23rd, 1897, at which time Albert E. Clarke, Esq., appeared as counsel for the defendant, The Wisconsin, Minnesota and Pacific Railroad Company; Hon. M. D. Grover appeared as counsel for the defendant, The Willmar and Sioux Falls Railway Company; Hon. H. W. Childs, attorney general, and Hon. Geo. B. Edgerton, assistant attorney general, appeared as attorneys for complainant.

After having heard counsel for the respective parties, and being fully advised, the court finds from the evidence and the admissions of the parties the following facts:

99 That the complainant Jacob F. Jacobson is and was at the time of making said petition a citizen and resident of the village of Madison in the county of Lac Qui Parle and State of Minnesota, and is and had been for a long time prior to the making of said petition engaged in the business of shipping grain, wood and other commodities on and over the lines of the Wisconsin, Minnesota and Pacific Railroad Company in said State. That the lines of the two defendant railroad companies intersect and cross each other at Hanley Falls in the county of Yellow Medicine in said State.

That the Wisconsin, Minnesota and Pacific Railroad Company is and for a long time prior to the filing of the petition, or complaint herein, has been operated in connection with a line of railway extending to the cities of St. Paul, Minneapolis and Duluth in the State of Minnesota and to various markets and business centers in adjoining States; and said company owns the line of road upon which Hanley Falls is situated, originating at Watertown, South Dakota, and extending from that point easterly to Morton in the State of Minnesota, at which point it connects with the Minneapolis and St. Louis road which owns the line of road from Morton to Minneapolis, and the connection is of such a character that it constitutes physically one straight line of road from said Watertown to

Minneapolis. And by virtue of a traffic and operating agreement through trains are run, although the ownership of the two lines aforesaid is entirely independent. That the Minneapolis and St. Louis Railroad Company connects at Merriam junction with the "Northwestern system," which runs direct to Omaha and Sioux City, and has a traffic connection with them for the trans-
100 portation of shipments originating at and west of Hanley Falls to Omaha and Sioux City.

That the Minneapolis and St. Louis railroad connects at Fort Dodge, Iowa, with the Illinois Central railway, which runs to Sioux City. That the said Minneapolis and St. Louis railroad connects at Des Moines, Iowa, with the Chicago, Rock Island and Pacific railroad, which runs direct to Omaha, and the joint line composed of the Minneapolis and St. Louis Railroad Company and the Wisconsin, Minnesota and Pacific Railroad Company has a traffic agreement and tariff with the Rock Island Company from Hanley Falls and points west of Omaha. That the tariff on stock shipments from Hanley Falls and points west and contiguous territory to Omaha and Sioux City is the same on the lines of both of the defendants to this proceeding.

The Wisconsin, Minnesota and Pacific Railroad Company was originally incorporated by the name of the Minnesota Central Railway Company under and by the provisions of chapter two, Special Laws 1857, extra session of the State of Minnesota, approved May 23rd, 1857, and the various acts amendatory thereof and supplementary thereto, and the name was subsequently changed pursuant to acts of the legislature to the Wisconsin, Minnesota and Pacific Railway Company, and the road that runs through Hanley Falls is now operated by the last-named company.

That the Willmar and Sioux Falls Railway Company is likewise operated in connection with a line of railway extending to St. Paul, Minneapolis and Duluth in the State of Minnesota, and to Sioux City, Iowa, and various markets and business centers in adjoining States, and its road is operated by the Great Northern Rail-
101 way Company, and the line formed by the Wisconsin, Minnesota and Pacific Railroad Company, and the Minneapolis and St. Louis Railroad Company is a competitor with the Willmar & Sioux Falls road for business originating and west of Handley Falls, destined both to Minneapolis and St. Paul markets and destined to Omaha and Sioux City. That said Willmar and Sioux Falls Railway Company was and is organized under the general laws of the State of Minnesota to construct a line of railroad from Willmar in said State to Sioux Falls in the State of South Dakota, which line was constructed and completed in the year 1888, crossing the Wisconsin, Minnesota and Pacific Railway Company's track at Hanley Falls, which last-named road was constructed some years prior to the *the* Willmar and Sioux Falls road.

That it owns no equipment, locomotives or cars, but the Great Northern Railway Company as lessees of the St. Paul, Minneapolis and Manitoba Railway Company runs its locomotives, trains and cars over the line of railroad of the Willmar and Sioux Falls Rail-

way Company under a contract arrangement with that company by which the Great Northern Railway Company maintains and keeps in repair the line of railroad of the Willmar and Sioux Falls Railway Company and accounts to said last-named company for the net earnings on its line.

That the Wisconsin, Minnesota and Pacific Railroad Company is an existing corporation and its line of railroad extends with its connecting lines and under the same management from the city of Minneapolis through the counties of Carver, Sibley, Renville, Redwood, Yellow Medicine and Lac Qui Parle to the city of Watertown, in the State of South Dakota.

102 That the Willmar and Sioux Falls Railway Company is an existing corporation and operates lines of railway, one line of which extends from the village of Willmar, in the county of Kandiyohi, through the counties of Chippewa, Yellow Medicine, Lyon, Pipestone and Rock, in the State of Minnesota, to the line of the State of South Dakota, thence southerly to Sioux City, Iowa; and the main line of said last-named company connects at said Willmar with what is known as the "Great Northern system" of railways, operated by the Great Northern Company, and which said system operates lines extending from the city of St. Paul via the city of Crookston to St. Vincent, and via the city of Breckenridge to the city of Fargo, North Dakota, and from Fargo to the city of Grand Forks, in said last-named State, and via the city of Crookston to the city of Everett, in the State of Washington, from which last-named city the said "Great Northern system" has and enjoys traffic connection with the lines of other railway companies whereby it is enabled to haul its freight and passenger trains to points situate upon the Pacific coast. That the Great Northern Railway Company has traffic connections with the Eastern Railway Company in Minnesota, which last-named company has a line extending from the city of Hinckley, Minn., to the cities of Duluth and Superior, situated at the head of Lake Superior. That at the station known as Hanley Falls, in said county of Yellow Medicine, the tracks of the lines of the Willmar and Sioux Falls Railway Company and of the said Wisconsin, Minnesota and Pacific Railroad Company intersect and cross each other at grade at a point from 40 to 60 rods distant from the respective depots of said defendants and in such manner that it is

103 practicable for them to provide thereat ample, equal and reasonable facilities by track connections for the transfer from the track of one of said roads to that of the other, any and all cars of whatsoever name or character used in the regular business on the lines of road of the said last two named companies or either of them. That no facilities whatever have been provided by either of said last-named companies at or near said station of Hanley Falls, nor at or near the point of intersection of said roads at Hanley Falls, neither do any now exist thereat whereby cars of any kind or description can be transferred from one to the other of said lines.

That the farmers along the line of the Wisconsin, Minnesota and Pacific Railroad Company west of Hanley Falls raise now and have been raising a great many stock cattle, that is, cattle that are ready

to be fed and fattened for market, and the natural markets for such cattle are St. Paul and Minneapolis, Minn., and Sioux City, Iowa. And in some seasons the market for stock is better at Sioux City than at the other markets named on account of the supply of feed being more plentiful and cheaper at and near Sioux City, and such stock can be sold at the best advantage in the market having the largest and cheapest supply of food.

That in order to ship cattle from stations on the line of the Wisconsin, Minnesota and Pacific railroad to Sioux City, Iowa, there being now no transfer facilities at Hanley Falls, it is necessary and has been for a long time past to ship cattle to Hopkins station, within a few miles of Minneapolis, and there transfer them to the Chicago, St. Paul, Minneapolis and Omaha Railroad Company for transportation to Sioux City. That the distance from Hanley Falls
104 via the Wisconsin, Minnesota and Pacific railroad and its connections to Sioux City, Iowa, is 380 miles, and the distance from said Hanley Falls to Sioux City via the Willmar and Sioux Falls Railway Company and its connections is 181 miles. And in the shipment of stock over the longer line the cattle are kept much longer on the road than they would be if the cattle could be transferred at Hanley Falls and shipped over the shorter line, which would be established if transfer facilities were provided at that point, and that cattle shipped by the longer route lose considerable more by shrinkage than they would if they could be shipped by the shorter line as they might be if transfer facilities were established at Hanley Falls. And then the shippers and cattle-raisers residing along the line of the said Wisconsin, Minnesota and Pacific Railroad Company west of Hanley Falls would have the advantage of two markets for said stock. That the expense of transferring cattle from one road to the other by unloading and reloading the same, in addition to the freight charges on both roads would be so great as to make it impracticable and entirely unprofitable to buy and ship cattle in that way.

That at the stations of Hazel Run, Clarkfield, Boyd, Dawson, Madison and other stations on the Wisconsin, Minnesota and Pacific Railroad Company all wood and posts have to be shipped from a distance. That thousands of cords of wood are sold in said towns annually, and that there is a larger supply of wood along the line of the Great Northern system, of which said Willmar and Sioux Falls railway is a part than there is along the line of the Wisconsin, Minnesota and Pacific Railway Company and its connections, and wood and posts are cheaper and the quality of wood
105 better at the primary markets on the line of the Great Northern system than on the line of the other system, of which the Wisconsin, Minnesota and Pacific Railroad Company is a part, and if proper transfer facilities existed at Hanley Falls such wood and posts could be sold at points west of Hanley Falls on said last-named road at much less than what is now paid therefor. That on account of there being no transfer facilities at Hanley Falls people living on one line of road are practically excluded from the markets of the other line of road on account of the extra expense and

inconvenience of transferring goods, wares, merchandise and cattle by unloading and reloading.

That it is practicable and necessary for the interests of traffic for said defendant companies to provide at the point of intersection of the roads of said companies at Hanley Falls ample facilities by track connections for transferring any and all cars used in the business of their respective lines of road from one of their said lines to the other; and it is practicable and necessary for the interests of traffic that said defendant companies provide at said point of intersection equal and reasonable facilities for the interchange of cars and traffic between their respective lines and for the receiving, forwarding and delivering of property and cars to and from their respective lines. That such facilities are practicable, necessary and reasonable for the proper accommodation of the people of this State using and employing the lines of said defendant companies as a means of travel and for the transportation of produce, wood, cattle and merchandise.

That the following is a proper, feasible and practicable location of curve for track connections between the main tracks of de-
106 fendant railroad company at the point of intersection at Hanley Falls for the purpose of providing ample transfer facilities as hereinbefore stated: From a point in the center line of the main track of the Wisconsin, Minnesota and Pacific Railroad Company 479 feet westerly from the point of intersection of the main tracks of said railroads, with foresight on point of intersection of said tracks, run a curve of 573.7 feet radius to the right for 778.6 feet, ending at a point in the center line of the main track of the Willmar and Sioux Falls Railway Company, 463.3 feet southerly from said point of intersection.

As conclusions of law from the foregoing facts the court finds: That it is the duty of the defendant-, The Wisconsin, Minnesota and Pacific Railroad Company and The Willmar and Sioux Falls Railway Company, and they should be and are required to forthwith provide at the place of intersection of their said roads at said Hanley Falls ample facilities by track connections for transferring any and all cars used in the regular business of their respective lines of road from the line or tracks of one of said companies to those of the other, and to forthwith provide, at said place of intersection equal and reasonable facilities for the interchange of cars and traffic between their respective lines and for the receiving, forwarding and delivering property and cars to and from their respective lines. That it is the duty of said defendants, and they should be and are required to forthwith put in and construct for the purpose aforesaid, at said place of intersection, a track of the same gauge as the tracks of said companies upon a curve commencing at a point in the center line of the main track of the Wisconsin, Minnesota and Pacific Rail-
road Company 479 feet westerly from the point of intersec-
107 tion of the tracks of said railroads, with foresight on point of intersection of said tracks, run a curve of 573.7 feet radius to the right for 778.6 feet, ending at a point in the center line of the main track of the Willmar and Sioux Falls Railway Company

463.3 feet southerly from said point of intersection, and furnish the same with the necessary and proper switches at each end to transfer cars from one road to the other.

Let judgment be entered accordingly.

Dated August 5th, 1897.

GORHAM POWERS,
District Judge.

Memorandum.

Counsel for the respective parties in their argument made at the trial of this cause and in their briefs have agreed that the principal question involved in this action is the constitutionality of chapter 91 of the General Laws of 1895. It is scarcely necessary to say that the court finds said act constitutional, as upon no other ground could the foregoing conclusions of law be based requiring the defendants companies to comply with the provisions of said act.

GORHAM POWERS, *Judge.*

108 STATE OF MINNESOTA, }
County of Yellow Medicine. }

District Court, Twelfth Judicial District.

JACOB F. JACOBSON, Complainant,
vs.
WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY and THE Willmar & Sioux Falls Railway Company, Defendants.

Judgment.

The above case having been submitted to the court on the 23rd day of January, A. D. 1897, and the court having duly considered the same, did on the 7th day of August, A. D. 1897, duly file its findings of fact and order for judgment herein.

Now, pursuant to such findings and on motion of H. W. Childs and George B. Edgerton, attorneys for said complainant, Jacob F. Jacobson, it is here and hereby determined, ordered and adjudged that the said defendants, The Wisconsin, Minnesota & Pacific Railroad Company and The Willmar & Sioux Falls Railway Company, forthwith provide at the place of intersection of their roads at Hanley Falls, in said Yellow Medicine county, ample facilities by track connections for transferring any and all cars used in the regular business of their respective lines of road from the line or tracks of one of said companies to those of the other, and forthwith to provide at said place of intersection equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivering
109 property and cars to and from their respective lines; and that said defendants forthwith put in and construct for the purposes aforesaid at said places of intersection a track of the same gauge as the tracks of said companies upon the curve commencing

at a point in the center line of the main track of the Wisconsin, Minnesota and Pacific Railroad Company, 479 feet westerly from the point of intersection of said railroads, with foresight on point of intersection of said tracks, and run a curve of 573.7 feet radius to the right for 778.6 feet, ending at a point in the center line of the main track of the Willmar & Sioux Falls Railway Company 463.3 feet southerly from said point of intersection, and said companies forthwith furnish the same with necessary and proper switches at each end to transfer cars from one road to the other.

Dated and signed this 21st day of August, A. D. 1897.

By the court:

JOHN J. OLSON,
Clerk of District Court.

110 STATE OF MINNESOTA, }
County of Yellow Medicine. }

District Court, Twelfth Judicial District.

JACOB F. JACOBSON
vs.
THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY and The Willmar & Sioux Falls Railway Company.

Notice of Appeal.

To Hon. H. W. Childs and Geo. B. Edgerton, attorneys for the above plaintiff, and to John J. Olson, clerk of said district court:

Please take notice, that the above-named defendant, The Wisconsin, Minnesota and Pacific Railroad Company, hereby appeals to the supreme court of the State of Minnesota from that certain judgment of the said district court entered herein, on the 21st day of August, A. D. 1897, and from each and every part thereof.

Dated this 9th day of September, A. D. 1897.

ALBERT E. CLARKE AND
W. F. BOOTH,
Attorneys for the Defendant The Wisconsin, Minnesota & Pacific R. R. Co.

Due service of the within notice of appeal admitted, at ——, Minn., this 29th day of September, 1897.

H. W. CHILDS,
Attorney for Respondent.

Due service of the within notice of appeal admitted, at
111 Granite Falls, Minn., this 30th day of September, 1897.

JOHN J. OLSON,
Clerk of Court.

STATE OF MINNESOTA, }
County of Yellow Medicine. }

District Court.

JACOB F. JACOBSON, Plaintiff,
vs.
THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY and The Willmar & Sioux Falls Railway Company, Defendants.

Notice of Appeal.

To Hon. H. W. Childs, attorney for said plaintiff, and to John J. Olson, Esq., clerk of said district court.

GENTLEMEN: You and each of you will please take notice that the above-named defendant, The Willmar & Sioux Falls Railway Company, appeals to the supreme court of the State of Minnesota from that certain judgment of the above-named court and entered in the above-entitled proceedings by said court on the twenty-first day of August, 1897, adjudging, decreeing and directing that said defendants provide transfer facilities by track connections
112 where their two lines intersect at the village of Hanley, State of Minnesota, and that said defendant appeals from the whole of said judgment.

Dated at St. Paul this first day of October, 1897.

M. D. GROVER,
Attorney for Defendant Willmar & Sioux Falls Railway Company, Third and Rosabel Streets, St. Paul, Minnesota.

Endorsed: Due and personal service of the within is hereby admitted this 2nd day of October, 1897. H. W. Childs, attorney for plaintiff. Due and personal service of the within is hereby admitted this 4th day of October, 1897. John J. Olson, clerk district court. Filed Oct. 4, 1897. John J. Olson, clerk.

113 10925.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1897.

JACOB F. JACOBSON, Respondent,
vs.
THE WIS., MINN. & PACIFIC R. R. CO. ET AL., Defendants; The Wis., Minn. & Pacific R. R. Co., Appellant. } No. 255. Syllabus.

1. Where the putting in of a connecting switch at the crossing of two railroads to facilitate the transfer of cars from one road to the other will benefit both State and interstate traffic—

Held, there is concurrent jurisdiction in the State and Federal authorities to order the putting in of such connection.

Held, it sufficiently appears that there is in this case such necessity for the connection in question, arising from the benefit which will accrue to State traffic alone, that the State railroad and warehouse commission were warranted in ordering the connection to be made.

But held further on the appeal from the order of the commission, the burden was on the appellant railroad companies to show a want of such necessity, and they failed to maintain that burden.

2. Held, ch. 10, G. L. 1887, as amended by ch. 91, L. 1895, does not, at least as applied to the present case, contravene either the Federal Constitution or the constitution of this State in conferring upon the commission power to require the making of such a connection, the transfer and interchange of loaded cars, and the making of joint rates for through shipments when a part of the haul is on one and part on the other of the two connecting railroads.

Judgment affirmed.

114 10925.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1897.

JACOB F. JACOBSON, Respondent,
vs.
THE WISCONSIN, MINNESOTA & PACIFIC R. R. Co. *et al.*, Defendants; The Wisconsin, Minnesota & Pacific R. R. Co., Appellant. } No. 255. Opinion.

The Willmar & Sioux Falls railroad extends from Willmar, in this State, in a southwesterly direction to Sioux Falls, in S. Dak., and is crossed nearly at right angles by the Wisconsin, Minnesota & Pacific railroad near Hanley Falls, in this State. The former railroad is a part of the Great Northern system of railroads and the latter is operated in connection with the Minneapolis & St. Louis railroad and as a part of the same. The crossing near Hanley Falls is a grade crossing, and there has never been any switch connecting the two railroads at that point. Ch. 10, G. L. 1887, as amended by ch. 91, Laws 1895, provides:

"SEC. 3. (A.) That all common carriers subject to the provisions of this act shall provide at all points of connection, crossing or intersection at grade where it is practicable and necessary for the interest of traffic, ample facilities by track connections for transferring any cars used in the regular business of their respective lines of road from their lines or tracks to those of any other common carrier whose lines or track may connect with, cross or intersect their own, and shall provide equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivering of passengers, property and
115 cars to and from their several lines and those of other common carriers connecting therewith."

The act further provides that on the application of any person

interested the State railroad and warehouse commission shall order connections to be made at such crossings, and this is conceded by appellants. The commission did so order in this case after notice and a hearing had in the manner provided by the statute. Both railroad companies appealed to the district court from the order. On a hearing had in the district court the order was affirmed and the connection ordered to be made by a curved switch, 778.6 feet long and particularly described, just as the commission had ordered. From the judgment of the district court entered thereon both railroad companies appeal to this court. The W., M. & Pac. R. R. Co. has appeared and filed a brief, but the other appellant has not argued the case or filed any brief.

The connecting switch will at the middle of the same extend outside of the right of way of each and either railroad, and it will be necessary to condemn at that place a narrow strip of land a few hundred feet long for the use of the switch.

One of the lines of the Great Northern system extends from Duluth southwest to Willmar. Another extends from St. Paul and Minneapolis west to Willmar. These two lines pass through large areas of woodland, the timber on which is available for fuel and fence posts. Southwest of Willmar and for many miles in all directions around Hanley Falls the country is mostly prairie, timber is scarce, and great quantities of cord-wood and fence posts are brought down on the W. & S. F. railroad from said timbered regions and distributed along that road. Timber is not as plentiful along the M. & St. L. system; for that reason cord-wood and fence posts are much dearer at the stations on the W., M. & Pac. railroad east and west of Hanley Falls than such wood is at that station and the stations north and south of it on the W. & S. F. railroad. For this reason it is for the benefit of the people in the territory
116 tributary to the W., M. & Pac. railroad, but not tributary to Hanley Falls, that this connection should be made so as to enable them to have cars of wood transferred at that point from the W. & S. F. railroad to the W., M. & Pac. railroad and distributed at the stations along the latter road. But this will deprive the W., M. & Pac. R'y Co. of the benefit of a much longer haul on dearer wood. The loss of revenue which will result to it by reason thereof is one of the grounds of its complaint here.

A large number of cattle are raised in the territory tributary to the W., M. & Pac. railroad west of Hanley Falls. For such of these cattle as are fat enough for beef, Minneapolis and St. Paul are the best market, but for the stockers and feeders Sioux City or Omaha is the best market. But there is no way of reaching Sioux City or Omaha with cars of stock shipped from said territory over said last-named road except by running the cars first to Hopkins, within 8 miles of Minneapolis, and then transferring them to another railroad with which the M. & St. L. R'y Co. has traffic arrangements and running the cars over such other road to Sioux City or Omaha. The distance from Hanley Falls to Sioux City by this route is 380 miles, while the distance from Hanley Falls to Sioux City over the W. & S. F. railroad is but 181 miles. Making the connection in

question will deprive the W., M. & Pac. R'y Co. of the benefit of such longer haul on such stockers and feeders, and the loss of revenue which will result to it by reason thereof is another ground of its complaint.

1. Appellant W., M. & Pac. R'y Co. contends that as the shipping of stock to Sioux City and Omaha is interstate commerce, the State tribunals have no jurisdiction over it and must not take into consideration the question of the transferring of cars of such stock when determining the necessity of a connection at this crossing. Conceding, without deciding, that the State tribunals would have
117 no jurisdiction to require the making of this connection for the sole purpose of transferring cars engaged solely in the carrying of interstate commerce, it does not follow that these tribunals may not take into consideration the benefit to such commerce also when determining the necessity of this connection. The whole traffic to be benefited by the making of the connection may be amply sufficient to justify requiring the same to be made; yet the part of such traffic commencing and ending in the State may not be sufficient when taken alone, and the part which consists of interstate commerce may not be sufficient when taken alone. If appellant's position is correct, neither the State tribunals nor the Federal tribunals would have jurisdiction in such a case. Clearly such is not the law. In such a case jurisdiction is concurrent. If there is some necessity resulting from the benefit which will accrue to exclusively State commerce by reason of the putting in of the connection, this gives the State tribunals jurisdiction (Munn *v.* Illinois, 94 U. S., 126), and in disposing of the case they *make* take into consideration the whole necessity resulting from the whole benefit which will accrue to all classes of commerce.

But even if this position was not correct, there is, in our opinion, ample evidence in this case of necessity resulting from the benefit which will accrue to exclusively State commerce, when considered alone, to justify the ordering of the connection in question. We will go further.

Under the statute every presumption is in favor of the action of the commission, and the burden was upon appellant to show that such action was contrary to law. See Steenerson *v.* Gt. N. R'y Co., 72 N. W. R., 713. Appellant has totally failed to maintain that burden. No evidence was offered by appellant in the district court at all as to the want of necessity for the making of this connection, but it rested its case wholly on the evidence of the witnesses called in behalf of the petitioner.
118 That evidence was not in appellant's favor, and certainly did not show conclusively that there was no necessity for this crossing.

2. Appellant further contends that said act of the legislature is unconstitutional and void, and the judgment entered in this case is erroneous, because they contravene numerous provisions both of the State and Federal constitutions. Said law and judgment require appellant to exercise the power of eminent domain, construct a railroad track, operate the same, and exchange business with in-

tersecting roads, and it is contended that all of this is outside of and beyond what its charter requires, and that therefore the law impairs the obligation of the charter contract between appellant and the State, deprives appellant of the equal protection of the laws, takes its private property without just compensation, deprives it of the right to contract with reference to its own business, &c.

All of these constitutional objections may be considered together. These two railroads are public highways, and all of these objections amount simply to this: It is wholly foreign to the purpose of two public highways of the same character to require them to connect where they cross each other, so that public traffic may pass from the one to the other, and where a private corporation has been chartered to construct, maintain, and operate such a public highway, with the right to charge reasonable compensation for its services in so doing, it is a violation of its charter to compel it to connect its highway with another intersecting highway of the same character, unless the right to require the connection is expressly reserved in the charter. We cannot so hold. If appellant's position is correct, it has the constitutional right to completely isolate its railroad at any time by cutting it off from all connection with other railroads, unless the right to compel connections is expressly reserved in its charter.

119 Its road commences at the village of Morton, in this State (an unimportant station at the terminus of a branch of the M. & St. L. R'y), and extends westerly to Watertown, in S. Dak., so that it may at any time and in spite of all public authority be very completely isolated and cut off from all large commercial centers, if appellant sees fit so to cut it off.

The legislature chartered appellant to construct, maintain, and operate a public highway, not a cul-de-sac or something worse, which has no connection with like highways either at its ends or sides.

A railroad is an improved highway on which certain modern appliances are used. It will not, as a general rule, serve fully the purposes for which it was intended unless the connections between it and other like highways which cross or touch it are improved in like manner and the same modern appliances are used in passing from one road to the other over those connections.

Again, why is not the doctrine advanced by appellant a two-edged sword? If the legislature cannot compel the making of such connections because there is nothing in the charter expressly authorizing or requiring the making of them, why is it not *ultra vires* under such a charter, and without express legislative authority, to make such connections voluntarily? But who will contend that a railroad company may not, without express authority and as incidental to its general powers, connect its tracks with the tracks of other railroads that extend to its road at its ends or intersect it at its sides?

Appellant's property is dedicated to public use, "is affected with a public interest," and the legislature certainly has the power to regulate that use in a reasonable manner unless appellant's charter

expressly protects it from such regulation. See Munn *v.*
120 Illinois, 94 U. S., 126; State *v.* R'y Co., 83 Mo., 144; Allnut *v.* Inglis, 12 East., 527; Lord Hale's Treatise, "De Jure Maris," 1 Harg. Law Tracts, 6.

Appellant was chartered to serve the public within the scope of its charter powers and franchises, in the best and most efficient manner possible. It was not, as it seems to contend, chartered to obstruct public traffic or serve the public the least that self-interest might dictate. Appellant cannot be allowed to obstruct the course of public traffic under the claim that by putting in this connection and letting such traffic take its course appellant will lose a large amount of revenue which it would otherwise earn. If by reason of putting in the connection its revenues will be so reduced that it will not, on its whole business, receive a reasonable compensation for its services, its remedy is by a readjustment of the whole or such part of its schedule of rates and fares as under the circumstances ought to be readjusted, in order to enable it to earn such reasonable compensation.

It is contended that even if the connections were made, neither railway company could be compelled to deliver its loaded cars to the other to be carried with their contents to their destination over the road of such other; that to compel appellant to deliver up its cars to be carried away from the line of its road to distant points would be in violation of its charter contract and unconstitutional; that for this reason it is useless to compel the making of the connection in question, and therefore the legislative act fails of its purpose and is unconstitutional and void.

Such interchange of cars between different railroads is a common and almost universal practice, yet there are few railroad charters which expressly authorize this practice. It would hardly be
121 contended that such an act of interchange is *ultra vires* on the part of a railroad company whose charter is silent as to such authority. As incidental to the operation of its road, a railroad company has the power to interchange cars with other connecting companies, and this is the ordinary and usual way of doing business. We are clearly of the opinion that the legislature has the power to compel a common carrier to do business in the ordinary and usual way, and therefore may compel such interchange of cars as incidental to the business for which the company was chartered.

The supreme court of Iowa reached the same conclusion in Burlington, &c., R'y Co. *v.* Day, 48 N. W. R., 98. See also Atchison, &c., R'y Co. *v.* Denver, &c., R'y Co., 110 U. S., 667; Peoria, &c., R'y Co. *v.* Chicago, &c., R'y Co., 109 Illinois, 135; Michigan Cent. R'y Co. *v.* Smithson, 45 Mich., 212; State *v.* R'y Co., 83 Mo., 144.

The statute provides: "In the event that said railway companies fail to establish through joint rates or fail to establish and charge reasonable rates for such through shipments, * * * it shall be the duty of the railroad and warehouse commission of this State * * * to establish reasonable joint rates for the shipment of freight and cars over any two or more connecting lines of railroad

in this State, and to prescribe the reasonable rules under which any such cars so transferred shall be returned."

Appellant suggests that cases may arise where it would be compelled to deliver its cars to another carrier who is insolvent, or where the couplings, air brakes, or other appliances of the cars of one of the carriers will not match with those of the other and where it would be unsafe to haul such other cars. It is only necessary to say that such cases can be disposed of when they arise. There is no suggestion that this is any such a case.

Appellant seems to contend that this statute attempts to make the two or more railroad companies partners for the purposes
122 of such a through shipment; that it attempts to compel the making of a joint shipping contract by which each company will be liable for all the defaults of the others in the through shipment, and that therefore the statute is unconstitutional and void. The statute merely provides that in case all the railroad companies concerned in the through shipment fail to fix a reasonable total sum for the total haul the commission shall do so for them. There is nothing in this which requires any company to assume any liability beyond its own line for the acts of others in making the haul.

There is nothing in the suggestion that the two appellants are competing roads within the terms of subdivision (F) of sec. 3 of said statute, at least as far as regards the traffic for which the connection in question is required.

This disposes of the case, and the judgment appealed from is affirmed.

CANTY, *J.*

123 STATE OF MINNESOTA, *ss:*

Supreme Court.

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the opinion and syllabus in the cause therein entitled, as appears fram the original remaining on file in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of said supreme court, at the capitol, in the city of St. Paul, this 16th day of April, A. D. 1898.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE, *Clerk.*

124 [Endorsed:] No. 10925. 758. State of Minnesota, supreme court. Jacob F. Jacobson, respondent, *vs.* Wis., Minn. and Pac. R. R. Co., appellant. Copy of opinion and syllabus. Filed April 15, 1898. D. F. Reese, clerk. October term, A. D. 1897. Canty, J.

125 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1897.

JACOB F. JACOBSON, Respondent,
vs.
THE WISCONSIN, MINNESOTA AND PACIFIC R. R. Co. *et al.*, Defendants; The Willmar and Sioux Falls Railway Company, Appellant. } No. 255.

Pursuant to an order of court duly made and entered in this cause on the second day of May, A. D. 1898—

It is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, of the district court of the twelfth judicial district, sitting within and for the county of Yellow Medicine, be, and the same hereby is, in all things affirmed; and it is further determined and adjudged that the respondent above named do have and recover of said The Willmar and Sioux Falls Railway Company, appellant herein, the sum and amount of one hundred and nine dollars ($109.00), costs and disbursements in this cause in this court, and that said respondent have execution for the enforcement thereof.

Dated and signed this 2nd day of May, 1898.

By the court:

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25.00
Clerk's fees for making return	26.00
Printer's fees	48.00
Clerk's fees, supreme court	10.00
Filing mandate	
Affidavits and acknowledgments	
Postage	
	$109.00

126 [Endorsed:] 10925. State of Minnesota, supreme court. Transcript of judgment. Filed May 2, A. D. 1898. D. F. Reese, clerk. —— ——, attorney for —— ——. Page No. 461, V Book.

STATE OF MINNESOTA, *ss:*

Supreme Court.

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of

record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this second day of May, A. D. 1898.

D. F. REESE, *Clerk.*

127 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1897.

JACOB F. JACOBSON, Respondent, *vs.* THE WISCONSIN, MINNESOTA AND PACIFIC R. R. Co. *et al.*, Defendants; The Willmar and Sioux Falls Railway Company, Appellant.	No. 255. Appeal from District Court, Twelfth Judicial District, County of Yellow Medicine.

This cause having been duly argued and submitted at the general October term of this court, A. D. 1897, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below herein appealed from be, and the same hereby is, in all things affirmed, and that the respondent above named have judgment accordingly.

Entered May 2nd, A. D. 1898.

By the court:

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

128 [Endorsed:] No. 10925. State of Minnesota, supreme court. Copy of order for judgment. Filed May 2, A. D. 1898. D. F. Reese, clerk. Entered on page 127 M.

129 STATE OF MINNESOTA:

Supreme Court, General October Term, A. D. 1897.

WEDNESDAY MORNING, 9.30 O'CLOCK,
February 2, *A. D.* 1898.

Court convened pursuant to adjournment, all the justices being present.

JACOB F. JACOBSON, Respondent,
vs.
THE WISCONSIN, MINNESOTA AND PACIFIC R. R. Co. *et al.*, Defendants; The Willmar and Sioux Falls Railway Company, Appellant.
} Cal. No., 255; Reg. No., 10925.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by respondent, submitted by appellant to the court for decision upon paper book and briefs of counsel, and taken under advisement.

A true record.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

130 [Endorsed:] 10925. State of Minnesota, supreme court. Copy of minutes of argument. Filed May 2, A. D. 1898. D. F. Reese, clerk.

131 [Endorsed:] No. 10925. State of Minnesota, supreme court. Jacob F. Jacobson, respondent, against Wis., Minn. and Pac. R. R. Co. *et al.*, defendants; Willmar and Sioux Falls R'y Co., appellant. Judgment-roll. Filed May 2nd, 1898. D. F. Reese, clerk.

132 State of Minnesota, Supreme Court.

STATE OF MINNESOTA,
Office of Clerk of Supreme Court,
} *ss:*

I, Darius F. Reese, clerk of the supreme court, State of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment, judgment-roll, and all of the proceedings had in the said supreme court of the State of Minnesota in the case between Jacob F. Jacobson, respondent, *vs.* The Wisconsin, Minnesota & Pacific Railroad Co. and The Willmar

& Sioux Falls Railway Co., appellants, including the opinion of the said supreme court therein, as appears from the original files and records.

And I do further certify and return that I have annexed to said transcript and included therewith and that the foregoing are copies of the petition for writ of error, with allowance of same, and of the assignments of error and of the bond, as the same remain on file and of record in said supreme court of the State of Minnesota, and are the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with proof of service thereof, and that the foregoing constitutes a true, full, and complete return to said writ of error.

Seal of the Supreme Court, State of Minnesota.

In witness whereof I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capitol, at St. Paul, Minnesota, this 20th day of January, A. D. 1899.

DARIUS F. REESE,
Clerk of the Supreme Court, Minnesota.

Endorsed on cover: File No., 17,283. Minnesota supreme court. Term No., 199. The Wisconsin, Minnesota and Pacific Railroad Company, plaintiff in error, vs. Jacob F. Jacobson. Filed January 30, 1899.

No. 199. 28

FILED
NOV 20 1899
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

Brief of Clarke for P. E.

October Term, 1899.

Term No. 199.

Filed Nov. 20, 1899.

THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JACOB F. JACOBSON, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF OF PLAINTIFF IN ERROR.

ALBERT E. CLARKE,
Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

October Term, 1899.

Term No. 199.

THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JACOB F. JACOBSON, DEFENDANT IN ERROR.

BRIEF OF PLAINTIFF IN ERROR.

Statement.

This proceeding was instituted by the defendant in error by a petition to the Railroad and Warehouse Commission of the State of Minnesota, praying that body to make an order, pursuant to a statute of that State, requiring the plaintiff
2 in error and the Willmar & Sioux Falls Railway Company to put in a connecting track or wye at Hanley Falls station, where their respective railroads intersect and cross.

Defendant in error is a citizen and resident of the village of Madison, a small station upon the Wisconsin, Minnesota & Pacific Railroad. This line of railroad extends from Watertown, South Dakota, to Morton, Minnesota, and thence, by a connection and traffic agreement with the Minneapolis & St. Louis Railroad, to Minneapolis. The connection and agreement are of such a character that the joint line constitutes practically one straight road from Watertown to Minneapolis, over which through trains are operated.

3 *Record, page 55, folio 94, also pages 57, 58, folio 99.*

It has joint tariffs and traffic contracts by which it makes through shipments from points on its own line to Sioux City,

Iowa, and Omaha, Nebraska, as well as to the various markets and business centers of adjoining States.

Record, pp. 57-58, folios 99 and 100; also page 60, folio 103.

The Willmar & Sioux Falls Railway extends from Sioux
4 Falls, South Dakota, to Willmar, Minnesota. At the last named station it connects with the St. Paul, Minneapolis & Manitoba Railway. The Willmar & Sioux Falls Company has no equipment, but the Great Northern Railway Company, as lessee of the St. Paul, Minneapolis & Manitoba Company, operates the road, accounting to the Willmar company for the net earnings of the line. By virtue of its traffic contracts and connections the Willmar & Sioux Falls Company has a direct line from Sioux Falls, South Dakota, to St. Paul and Minneapolis. It has direct connection with Sioux City, Iowa, as
5 well as with the principal markets of adjoining States.

Record, pages 58, 59, folios 100 to 103, inclusive.

The two railroad companies are competitors for all business originating west of Hanley Falls, destined to St. Paul, Minneapolis, Omaha and Sioux City markets.

Record, page 58, folio 101.

The tariff on stock shipments from Hanley Falls and points west and contiguous territory, to Omaha and Sioux City, is the same by the line of each company.

6 *Record, p. 55, folio 95; also p. 58, folio 100.*

The distance from Hanley Falls to Sioux City via the Willmar & Sioux Falls Railway and connections is 181 miles. By the Wisconsin, Minnesota & Pacific Railroad and its connections the distance is 380 miles.

Traffic originating on the railroad of the plaintiff in error west of Hanley Falls, destined to Omaha or Sioux City, could, if transferred at that point to the Willmar & Sioux Falls Company, be transported to destination by a shorter route than if carried wholly over the line of plaintiff in error. It could,
7 if thus transferred, be transported to destination in less time than by the longer line, provided such transfer be made in car loads without unloading from the cars in which the shipments are first made. No facilities have been provided by either of said railroad companies for the transfer or interchange of business at Hanley Falls, and there is no track connection between their respective railroads, but they have track connections and transfer facilities at Minneapolis.

Record, page 55, folio 97.

There is a larger supply of wood along the line of the
8 Great Northern system, of which the Willmar & Sioux Falls Railway forms a part, than upon the line of railway of the plaintiff in error. Citizens of towns west of Hanley Falls upon the line of railway of the plaintiff in error are purchasers and consumers of wood and posts, and a connection and transfer facilities at Hanley Falls would cheapen these commodities at such towns.

It is admitted by the defendant in error, who testified before the Commission that the connection and transfer facilities demanded will be useless unless a joint through rate
9 be made and a transfer without cost to the shipper be enforced.

Record, p. 45, folios 75, 76.

Chapter 91 of the General Laws of Minnesota for 1895 is as follows:

CHAPTER 91.

An act to amend chapter ten (10) of the General Laws of eighteen hundred and eighty-seven (1887), entitled an act to regulate common
10 carriers, and creating the Railroad and Warehouse Commission of the State of Minnesota and defining the duties of such commission in relation to common carriers.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That section three (3) of chapter ten (10) of the General Laws of eighteen hundred and eighty-seven (1887) be amended so as to read as follows:

SEC. 3. (A) That all common carriers subject to the provisions of this act shall provide at all points of connection, crossing or intersection at grade, where it is practicable and necessary for the interests
11 of traffic, ample facilities by track connections for transferring any cars used in the regular business of their respective lines of road from their lines or tracks to those of any other common carrier whose lines or tracks may connect with, cross or intersect their own, and shall provide equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivery of passengers, property and cars to and from their several lines and those of other common carriers connecting therewith, and shall not discriminate in their rates or charges between such connecting lines or on freight coming over such lines; but this shall not
12 be construed as requiring any common carrier to furnish for another common carrier its tracks, equipment or terminal facilities without reasonable compensation; that each of said connecting lines shall pay its proportionate share for the building and maintenance of such tracks and switches as may be necessary to furnish the transfer facilities required by this act, and in case they cannot agree on the amount which each line shall pay, then said amount shall, upon application by either party, be determined and adjusted by the Railroad and Warehouse Commission, and either party shall have the right to appeal from the order of said commission fixing the amount so to be
13 paid, to the district court of the county where said transfer facilities are furnished, by serving a notice in writing on the adverse party within ten (10) days after the making and filing of such order by said commission, and upon the service of such notice there shall be pending in said district court a civil action for the adjustment and determination of the amount to be paid by each carrier for the expense

of the building and maintenance of said transfer facilities. Pleadings shall be made and filed in said action in conformity to those required by law and rules of practice in said court, and said cause shall be
14 tried in the manner provided for the trial of civil actions in the district courts of this State.

(B) All railway companies doing business in this State shall, upon the demand of any person or persons interested, or upon demand of the Railroad and Warehouse Commission, establish reasonable joint through rates for the transportation of freight between points on their respective lines within this State.

Carload lots shall be transferred without unloading from the cars in which such shipments were first made, unless such unloading into other cars shall be done without charge therefor to the shipper or
15 receiver of such carload lots, and such transfer shall be made without unreasonable delay, under such contract arrangements as such connecting companies may make, or under such rules as the Railroad and Warehouse Commission may prescribe, as hereafter provided in this act.

Less than carload lots shall be transferred into the connecting railway cars at cost, which shall be included in and made a part of the joint rates adopted by such railway companies, or established as provided by this act. When shipments of freight to be transported between different points within this State are required to be carried by
16 two (2) or more railway companies operating connecting lines, such railway companies shall transport the same at reasonable through rates, and shall at all times give the same facilities and accommodations to local or State traffic as they give to interstate traffic over their lines of road.

(C) In the event of that said railway companies fail to establish through joint rates, or fail to establish and charge reasonable rates for such through shipments, or fail to establish between themselves the rates and terms upon which cars of one company shall be transferred in such through shipments from the line of one company to the
17 other and returned, or fail to provide for the convenient and prompt transfer of such through freight from the cars of the receiving company to those of the connecting line, it shall be the duty of the Railroad and Warehouse Commission of this State, and said commission is hereby directed, upon the application of any person or persons interested, to establish reasonable joint rates for the shipment of freight and cars over any two or more connecting lines of railroad in this State, and to prescribe the reasonable rules under which any such cars so transferred shall be returned; and in establishing, changing or revising any such rates they shall take into consideration
18 the average of rates charged by said railway companies operating such connecting lines for joint interstate shipments for like distances.

The rates established by said comanission shall go into effect within ten (10) days after the same are promulgated by said commission, and from and after that time the schedule of rates so established shall be prima facie evidence in all courts of this State that such rates are reasonable through rates for the transportation of freight and cars upon the railroads for which such schedule shall have been fixed.

(D) Before the promulgation of such rates or rules, as above pro-
19 vided, the Railroad and Warehouse Commission shall notify the companies interested in the schedule of joint rates fixed by them, and they shall give said railroad companies a reasonable time thereafter to agree upon a division of charges provided for in such schedule; and in the event of the failure of the railway companies to agree upon such division and to notify the Board of such agreement, said commission shall, after a hearing of the companies interested, decide the same, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by
20 the commission shall, in all controversies or suits between the railroad companies interested, be prima facie evidence of the just and reasonable division of such charges.

(E) Every unjust and unreasonable charge for the transportation of freight and cars over two or more railroads in this State is hereby prohibited and declared to be unlawful, and every company or person violating the provisions of this section shall be subject to the penalties presribed in section twelve (12) of the original act to which this act is amendatory.

21 (F) Nothing herein contained shall be construed as requiring any railroad company to send its cars over the line of railroad of another company when its own line of railroad runs to and reaches the point of destination or the point of connection with another railroad on which such point of destination is located, or to use its track or terminal facilities at terminal points for the handling of cars or traffic of another or competing company; *provided*, that in no case shall the charges for transportation exceed the established through joint rates between any two points.

22 (G) Whenever any property is received by any common carrier subject to the provisions of this act to be transported from one place to another within this State, it shall be unlawful for such common carrier to limit in any way, except as stated in its classification schedule, hereinafter provided for, the common law liability with reference to such property, while in its custody as a common carrier; such liability must include the absolute responsibility of the common carrier for the acts of its agents in relation to such property.

SEC. 2. That subdivision "B" of section nine (9) of chapter ten (10)

23 of the General Laws of one thousand eight hundred and eighty-seven (1887), is hereby amended by striking out all after the word "office" in line twelve (12) of said subdivision "B," and substituting therefor the following, to-wit:

Said commissioners shall not, while holding office under this act, be interested in any stock or bonds of any common carrier or in any contract for construction, repair or maintenance of any railroad, or accept any retainer or employment from any common carrier under the jurisdiction of said commission.

24 No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission.

SEC. 3. That subdivision "D" of section fifteen (15) of chapter ten (10) of the General Laws of one thousand eight hundred and eighty-seven (1887), as amended by chapter one hundred and six (106) of the General Laws of one thousand eight hundred and ninety-one (1891), is hereby amended by inserting in line two (2) of said subdivision "D," after the word "commission," the words, "or any party to any proceeding before said commission and affected by its order."

25 SEC. 4. This act shall take effect and be in force from and after its passage.

Approved April 25th, 1895."

Upon a hearing had before the State Railroad and Warehouse Commission, an order was made requiring the interested companies to construct the connecting track. *Record, page 49.*

An appeal was duly taken from this order to the District Court of the State of Minnesota for Lac qui Parle County, which court ordered judgment in favor of the defendant in error and confirming the order of the commission. *Record, page 57.*

26 On August 21st, 1897, judgment was entered accordingly (*Record, pp. 62-63*), and an appeal therefrom was duly

taken to the State Supreme Court, which, on May 2d, 1898, affirmed the judgment of the District Court. *Record, page 71.*

A writ of error issued to said State Supreme Court,, and citation, was served January 4, 1899 (*Record, page 2*), and the return filed in this court January 30, 1899.

It was urged by the plaintiff in error upon the trial of said cause, both in the District and the Supreme Courts of the State of Minnesota, that the provisions of Chapter 91 of
27 the General Laws, 1895, amendatory of Chapter 10, General Laws, 1887, and all acts of the Legislature of the State of Minnesota which require the construction of connecting tracks and an interchange of business and traffic between intersecting railways, is in violation of the Fourteenth Amendment to the Constitution of the United States, in that the State of Minnesota, in, by and through the provisions of said Chapter 91 assumes to abridge the privileges and immunities of this plaintiff in error as a citizen and denies to it the equal protection of the laws, and deprives it of its property and the use thereof without due compensation or due
28 process of law, as well as the right and liberty of contracting with reference to its business.

It was also urged by the plaintiff in error upon the trial of said cause, both in the District and Supreme Courts of the State of Minnesota, that the provisions of said Chapter 91, General Laws of 1895, was violative of the Fourteenth Amendment to the Constitution of the United States, in that by the provisions of said chapter the State of Minnesota denies to the plaintiff in error the right to contract in reference to its own business, and thus takes its property without its consent and compels it to enter into involuntary, unreasonable
29 and unprofitable contracts with another railroad at the instance of third parties, resulting in a loss of business and revenue on the part of the plaintiff in error.

It was also urged by the plaintiff in error upon the trial of said case, both in the District and Supreme Courts of the State of Minnesota, that the provisions of said Chapter 91, General Laws of 1895, are in violation of Section 10, Article I, of the Constitution of the United States, in that the provisions of said chapter impair the obligation of the charter contract between said State of Minnesota and the plaintiff in error.

30 It was also urged by the plaintiff in error upon the trial of said case, both in the District and Supreme Courts of the State of Minnesota, that the provisions of said Chapter 91, of General Laws of 1895, are violative of Section 8, Article I, of the Constitution of the United States, which confers upon Congress the exclusive power to regulate commerce among the several States.

The Supreme Court of the State of Minnesota, by its final judgment in this action, rendered on the 2d day of May, 1898, adjudged and determined that the provisions of said Chapter
91, General Laws of 1895, amendatory of Chapter 10, Gen-
31 eral Laws 1887, of the acts of the Legislature of the State of Minnesota, are not in violation of the Fourteenth Amendment to the Constitution of the United States, nor in violation of Section 10, Article 1, nor Section 8, Article 1, of the said Federal Constitution.

Record, pp. 67, 68, folio 118.

Assignment of Errors.

The plaintiff in error respectfully submits that the Supreme Court of the State of Minnesota erred in this:

I. The Court erred in holding that the provisions of Chapter 91 of the General Laws of the State of Minnesota for
1895, amendatory of Chapter 10 of the General Laws of
32 1887, of the acts of the Legislature of the State of Minnesota, which require the construction of connecting tracks in the interchange of business and traffic between intersecting railways, is not in violation of the Fourteenth Amendment to the Constitution of the United States, in that the State of Minnesota, by and through the provisions of said Chapter 91, assumes to abridge the privileges and immunities of the plaintiff in error as a citizen, denies to it the equal protection of the laws, and deprives it of its property and the use thereof without due compensation or due process of law, and
denies to it the right of contracting with reference to its
33 own business.

II. The Court erred in holding that the provisions of said Chapter 91, General Laws 1895, are not in violation of the Fourteenth Amendment to the Constitution of the United States, in that by the provisions of said chapter the State of Minnesota denies to the plaintiff in error the right to contract with reference to its business, and thus takes its property without its consent and compels it to enter into involuntary, unreasonable and unprofitable contracts with another railroad company at the instance of third parties, resulting in a loss of
business and revenue on the part of the plaintiff in error.

34 III. The Court erred in holding that the provisions of said Chapter 91, General Laws 1895, are not in violation of Section 10, Article 1, of the Constitution of the United States, in that the provisions of said chapter impair the obligation of the charter contract between said State of Minnesota and the plaintiff in error.

IV. The Court erred in holding that the provisions of said Chapter 91, General Laws 1895, are not in violation of

Section 8, Article 1, of the Constitution of the United States, which confers upon Congress the exclusive power to regulate commerce among the several States.

Argument.

I.

The plaintiff in error is a railroad corporation created by special act of the Legislature of the Territory of Minnesota, approved May 23d, 1857, the act being Chapter 2 of the Special Laws, extra session, of 1857. This act, with its amendments, constitutes the charter of the company, and is the contract which fixes and measures the mutual and several obligations and duties of the railroad company and the State.

A railroad company is guaranteed by its charter the right to build a railroad and having built it the right to operate it. The purpose of the construction of a railroad is to earn money. Its methods of earning money are limited to the carriage of passengers and freight. The value of the property and the value of the franchise is dependent upon the earning capacity. By the acceptance of the charter and the construction of the railroad thereby authorized, a railroad company becomes invested with the right to transport over its road all freight and passenger traffic which it can secure by legitimate methods. As the value of the property, its solvency and its existence are dependent upon its ability to secure traffic, and as its entire property is acquired, constructed and maintained for the sole purpose of such transportation, it logically and necessarily follows that the right or franchise to construct and operate a railroad includes the right to secure and retain business.

The franchises of a railroad company are limited to its own line. They do not extend to, nor can they be exercised upon the lines of other railroads. It has the right to preserve, protect and foster its own business and interests. The charter includes a contract that the State will not destroy the value of the property it has induced the corporation to construct, nor will it compel the corporation to exercise its corporate powers for the destruction of its own business.

The State of Minnesota, by the act of its Legislature, asserts the right

1. To compel two railroad companies, competing for a certain class of traffic from a certain territory to a common market, to join in the cost of construction of a track to be used for the purpose of depriving one company of its traffic and transferring it to the other. *Sec. 3 (1), Act of 1895.*

39 2. To compel a railroad company, upon the line of which traffic originates and over which it can be transported to destination, to surrender its business to its competitors at any point of intersection which is nearer the common market by the competing line, than by that of the initial carrier, notwithstanding that such initial carrier will carry it at the same rate over its own line. *Sec. 3 (A), Act of 1895.*

3. To compel two railroad companies to make a joint rate for the transportation of such traffic. *Sec. 3 (B), Act of 1895.*

4. To compel the initial carrier to deliver its cars to the
40 competing line, or, as an alternative, to transfer car loads of freight into the cars of the other company without charge. *Sec. 3 (B), Act of 1895.*

5. To compel the initial carrier to transfer less than car load lots at cost. *Sec. 3 (B), Act of 1895.*

6. To compel the connecting carrier to hire the cars of the competing initial carrier for the continued transporcation of the goods.

7. To compel a railroad company to acquire land by purchase or condemnation for the construction of a track to be used to divert its business to the line of its competitor.

41 Subdivision "F" of Section 3 of the act provides as follows:

"(F) Nothing herein contained shall be construed as requiring any railroad company to send its cars over the line of railroad of another company when its own line of railroad runs to and reaches the point of destination or the point of connection with another railroad on which such point of destination is located, or to use its track or terminal facilities at terminal points for the handling of cars or traffic of another or competing company; *provided*, that in no case shall the charges for transportation exceed the established through joint rates between any two points."

42 Under the provisions of this section the plaintiff in error is relieved from delivering its cars to its competitor, but is subject to the burden of unloading the contents into the cars of the other company without charge, the tariff being carefully limited, by the proviso, to the "through joint rates."

The plaintiff in error submits the following propositions of law:

(a) The act of the State Legislature requiring the plaintiff in error to surrender the traffic which it has secured for transporation over its own line, to a destination to which it has constructed and acquired railroad facilities, from which transportation it derives its revenue, is a violation of the
43 charter contract.

(b) The provision of the act by which two railroad corporations are compelled to make a joint rate for the transportation of freight between points on their respective lines, denies to such corporations the equal protection of the laws, in that it denies the right to contract in reference to their own business; it assumes to compel them to enter into contract relations against their will; it compels them to exercise their franchises to the destruction of their business; it compels them to surrender the right to use their property for the purpose for which it was acquired; it compels them to ren-
44 der service without compensation, and thus imposes upon them burdens and restrictions from which other citizens of the State are exempted.

(c) Enforcement of the act will deprive the plaintiff in error of its property without due process of law, in this:

It deprives it of the right to contract in reference to its own business, which is both a personal and a property right.

It deprives it of the right to transport the traffic it has secured to the place of destination over its own line of railroad, which railroad was constructed at great cost for the sole purpose of such transportation, thereby depriving it of
45 its revenue, depleting its income, reducing the value of its property and preventing the enjoyment of the franchise granted by the State.

It compels plaintiff in error to expend its money and the time and labor of its employes in unloading its cars at Hanley Falls and loading the cars of its competitor, without any compensation whatever.

In case traffic is destined to a point not reached by the line of the plaintiff in error, or by its connections, it is required by the act to deliver its cars to the connecting carrier, without security for their return, without provision for
46 compensation for use, and without regard for the necessity for their use upon its own line of railroad.

It is required to receive the cars of the connecting carrier and use them in the continued transportation of traffic, although it may have cars of its own which are idle, and with which such traffic could be transported.

(d) The act of the State Legislature violates Section 8, Article I, of the Federal Constitution, as it assumes to regulate interstate commerce.

The act of the State Legislature must be construed as an entirety, and it is plain that its enforcement is a violation of the contract embodied in the charter of the plaintiff in
47 error. Mr. Black, in his work on constitutional prohibitions (Sec. 14), says:

Black

"The doctrine, as now settled and universally accepted, may be stated as follows: The charter of a private corporation is a contract, within the meaning of the Constitution of the United States, between the State granting the charter and the corporation created by it, and any constitutional provision or act of the Legislature that impairs it, whether by enlarging the power of the State over the body corporate, or by abridging its franchises, or otherwise altering it in a material point, is repugnant to the Constitution and void."

48 In *Planters Bank vs. Sharp, 6 Howard, 327,* this court says:

"One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not, by the constitution, to be impaired at all. This is not a question of degree, or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force."

Section 3 of Chapter 2, Special Laws of Minnesota, passed at the extra session of 1857, which is the act by which plaintiff in error was incorporated, reads as follows:

49 "SEC. 3. The said corporation is hereby authorized and empowered, and *it is hereby declared that the object and purposes thereof, are to survey, locate, construct, complete, maintain, use and operate;* at their pleasure to alter the line thereof, without changing the termini on the Mississippi River, a railroad with one or more tracks, or lines of rails, from the village of Red Wing, in the county of Goodhue and Territory of Minnesota, by a most feasible and practicable route, to the line of said Territory in the direction of the great bend of the Missouri River, together with all proper stations, depots, turnouts,
50 engines, cars and other appurtenances and furniture of a railroad, and to form such junctions and make such other arrangements as may be agreed upon, not inconsistent with the charters of any other railroad company in said Territory, or connecting with said Territory."

The railroad has been located and constructed under this legislative authority, and has since its construction been maintained and operated. By this grant the legislature contracted that the plaintiff in error should have the right to
51 become a competitor for the business of the public with no restrictions upon its right to secure and retain such business other than those reasonable uniform regulations and restrictions, applicable alike to all carriers and resulting from usual business conditions. The record (p. 58, folio 101) shows affirmatively that the plaintiff in error and its co-defendant in the State Court are competitors for business west of the point of intersection at Hanley Falls. The State of Minnesota, the common source of corporate existence and privilege, by the provisions of this law enters the field of competition and by virtue of its paramount authority, assumes to divert the business of the plaintiff in error to the line of its com-
52 petitor. The State assumes to favor one citizen at the expense of another. The State assumes to distribute and apportion the business of a certain territory between carriers. The State assumes the right to compel a carrier to join in the construction and creation of a competitive line having such an advantage in mileage that it necessarily destroys its exist-

ing business. The plaintiff in error is denied the right to retain its business but is commanded to surrender it.

Every railroad company seeks to secure the longest possible haul over its own rails. The longer the continuous haul, the less the cost of transportation to the carrier. Traffic
53 agreements between carriers are always conditioned to secure the longest possible haul to the initial carrier, which has secured the business. The right to make such contracts in its own interest and for its own advantage is one of the valuable rights conferred by the charter contract. It is a right guaranteed by the constitution. It is a personal right as well as a property right. Enforcement of the State statute deprives the carrier of the right to make contracts for carriage beyond its own line, by which it can secure rates and divisions of earnings most favorable to itself and secure the longest possible haul over its own rails. Division of joint earn-
54 ings is an important factor in railroad management and earnings. Competition between connecting carriers is an important element in fixing the earnings of an initial carrier. Such competition enables the initial carrier to contract to its own advantage without increasing the cost of transportation to the shipper or consignee. Division of joint earnings is purely and properly a matter of contract. The right to make such contracts must be admitted, not being contrary to common law, statute law or public policy. Enforcement of the State statute destroys that right. By compelling the carrier to surrender its traffic to the carrier operating any
55 intersecting line, which furnishing a shorter route to destination, the initial carrier is deprived of the right to select and contract with its connecting carriers and so its charter contract is violated; it is denied the equal protection of the laws which protect individual contracts and its property is taken without due process of law.

The Fourteenth Amendment to the Federal Constitution secures, not only the right of the citizen to be free from mere physical restraint of his person, but to be free in the employment of all his faculties; to use them in all lawful ways; to live and work where he will, and earn his livelihood in
56 any lawful manner; to pursue any livelihood or avocation, and for that purpose to enter into all contracts that may be proper, necessary and essential to his carrying out the purposes above mentioned. These rights are inalienable.

United States vs. Sweener, 95 Fed. Rep. 450.
Allgeyer vs. Louisiana, 165 U. S. 589.

Corporate rights and individual rights stand upon the same level platform of equality and personal liberty. The corporation and the individual are alike citizens of state and nation and are alike entitled to the equal protection of the laws which are framed to effectuate the principles declared as the basis
57 of our right to self-government and independence. The

declared purpose of the State is to deprive the plaintiff in error of the right to make its own contracts, select its own connecting carriers, agree upon the division of joint earnings, and carry freight upon its own railroad. It proposes to create traffic contracts by which the plaintiff in error can be compelled to divide its earnings and its business with its competitor; to compel it to enter into a joint tariff with such competitor; to compel it to deliver its cars to such competitor; to surrender its business, relinquish the long haul over its own line, render service without compensation in transferring the contents of cars, and expend its money in constructing fa-
58 cilities for the destruction of its own business.

The State Supreme Court has construed the statute as one designed to compel a mechanical connection of the railroads, an interchange of traffic and the establishment of a joint tariff. It clearly goes to the extent of establishing contract relations under compulsion. It is conceded that the mechanical connection is useless in the absence of a joint tariff and a transfer without cost to the shipper.

Record, p. 45, folios 75, 76.

The judgment of the State court must be treated as a
59 step toward enforcement of the act in all its parts; not as an enforcement of a mere mechanical connection between the railroads. It asserts the power of the State to compel a railroad company whose road was built under a charter older than the Act, to enter into involuntary and unprofitable traffic agreements by which it will be deprived of the use of its property for the purpose for which it was constructed, and its income and earnings diminished by an enforced relinquishment of its business.

The power to regulate commerce does not include the power to interfere with private contracts.

60 *Railroad Co. vs. Richmond, 19 Wallace, 589, 590.*

By the terms of this Act the State is given control of the business of a carrier in detail. Under its provisions a railroad company may be required:

To enter into involuntary contract relations with every carrier whose line now or hereafter intersects its own.

To deliver to the carrier operating any intersecting road the property entrusted to its care, and for which it is responsible, without regard to the solvency or insolvency of such carrier.

61 To deliver its rolling stock to such carrier, regardless of its own needs, and without security for its return or preservation.

To make joint tariffs for the transportation of traffic.

To adjust its time cards to those of the intersecting line; otherwise the transfer would be without advantage.

To furnish and maintain at every railroad crossing, the buildings, switch engines and employes required to make the transfers. If the initial carrier declines to deliver its own cars to the company operating the intersecting line, their contents must be transferred without compensation, and thus the
62 time and services of its employes are to be confiscated for the benefit of the individual shipper.

If the intersecting carrier fails to furnish the necessary cars to receive the transferred shipment, the law becomes inoperative; yet they can only be supplied by the maintenance at each crossing of storage tracks and a constant supply of cars. In case of transfers of live stock, delay at remote crossings necessitates the erection of yards, a water and food supply, and men to care for the stock.

To make time cards affording close connections at every crossing is an impossibility. To delay trains for the transfer of traffic at every crossing would be destructive of the
63 business of the carrier. Passing tracks, freight houses, switchmen, stock yards and storage tracks must, under this law, be provided at every point of intersection. Railroad companies provide these facilities at their regular stations. Are they also required to furnish them at every crossing? If so, who is to furnish them? Can two railroad companies be compelled to enter into a co-partnership of labor and division of expenses at every railroad crossing, make joint rates, joint time cards, and render service gratuitously, or at cost?

64 II.

Mr. Justice Field held, in *Oregon Short Line, etc., Co. vs. Northern Pacific R. R. Co., 51 Fed. Rep., 470*, that neither at common law nor under the Interstate Commerce Act can a railroad company be compelled to haul the cars of another company over its line where it has cars of its own which it desires to use for the transportation of traffic; nor can one carrier be required to advance or assume payment of the freight charges due a preceding carrier. Such matters are regulated by contract.

65 It is held in *Railway Co. vs. Railway Co., 41 Federal Reporter, 562*, that a court cannot require a railroad company to contract with another carrier, engaged in like traffic, for a joint through routing and joint through rate, nor can the court make such a contract for the parties.

And see:

Railway Co. vs. Osborn, 52 Fed. Rep., 914.
Railway Co. vs. Ry. Co., 59 Fed. Rep., 400.
Kentucky & I. Bridge Co., 37 Fed. Rep., 625.

66 I have been unable to find that any court of last resort has heretofore committed itself to the proposition that a

The ruling of the Supreme Court of Iowa in the case of *Railway* vs. *Dey*, herein referred to, upon the second hearing, will be found in *56 Northwestern Reporter, page 271.*

State is invested with a power so arbitrary. It is true that the Supreme Court of Iowa, in the case of *Railway Co. vs. Dey et al., Railroad Commissioners, 48 N. W. Rep., 98*, held in favor of the validity of a similar act (which did not, however, provide for a compulsory mechanical connection of intersecting roads), but the same court, in the same case, upon a second appeal, disapproved that holding. While it was held that,
upon the second appeal, the ruling first made must stand
67 as the law of that case, the court said:

"In thus disposing of this case we are not to be understood as approving of the correctness of the former holding. Some of us are content with the result reached in the former opinion; others, the writer included, do not approve of some of the reasons and conclusions found in the opinion rendered by a majority of the Court as then constituted, and do not wish to be considered as bound by it in any other case."

A statute like this was held by the Supreme Court of Nebraska to be violative of the Federal Constitution.

State ex rel. Board of Transportation vs. Railroad
68 *Co., 65 Northwestern Reporter, 766.*

The case was carefully considered. The opinion contains a review of the decisions of this court upon the question of State control of railroads. The conclusion reached was, that the act must be construed as an entirety; that the question of power to enforce a mere mechanical connection was but an incident to the main question, which involves the power of the courts to make contracts between individuals; a power held not to exist. This is the true point involved. As already shown, a mechanical connection of two railroads is
69 of no benefit to the shipper unless the State can compel the carriers to enter into contract relations, make joint rates, arrange for divisions of earnings, exchange or hire of cars, payment of, or credit for advance charges, etc. Applied to this case, the power includes the right to oblige the plaintiff in error to expend its money in the construction of a track designed for the destruction of its business and the consequent diminution of the earning capacity and value of its entire property. The purpose for which the track is to be built is the
70 important feature which controls the question of power to compel its construction.

Mr. Justice Field, in *County of Santa Clara vs. Southern Pacific R. R. Co., 18 Fed. Rep., 406*, said:

"The doctrine of unlimited power of the State over corporations, their franchises and property, simply because they are created by the State, so frequently and positively affirmed by counsel, has no foundation, whatever, in the law of the country. By the decision of the Supreme Court of the United States in the Dartmouth College Case, it was settled, after great consideration, that the charter of a corpora-
71 tion, under which its franchises its capacity to do business and hold property is conferred, is a contract between the corporators and the State, and therefore within the protection of the federal constitution prohibiting legislation impairing the obligation of contracts. So far

from the State having unlimited control over the franchises and property of corporations, because of its paternity to them, it has under that decision *only such as it possesses over the contracts and property of individuals.*"

The State statute can only be effective by interference with the right of private contract. When two railroad companies have voluntarily connected their lines of railroad
72 and entered into an arrangement for the transfer and continued transportation of traffic, the independent line thus voluntarily created is subject to the same degree and character of State regulation as other lines. The question of *regulation* of a joint line voluntarily created, and the compulsory *creation* of such line, are distinct. If two individuals enter into a co-partnership, such co-partnership is subject to all laws regulating co-partnerships. It does not follow that the individuals can be compelled to form the co-partnership.

73 III.

It appears affirmatively by the petition, as well as by the separate answers of the interested railroad companies, that both railroads are interstate roads, and the business which the State assumes to control and regulate is interstate business. The evidence shows that the traffic to be affected by the proposed connection is interstate traffic, viz: the transportation of cattle from points on the line of the plaintiff in error (which extends westward to Watertown, South Dakota) to Omaha, Nebraska, and Sioux City, Iowa, and the transportation of wood and posts between the same points on the
74 line of the plaintiff in error and points on the line of the Great Northern Railway Company. The lines of the last named company are interstate, connecting with the Willmar & Sioux Falls Railway at Willmar, Minnesota.

The State law is clearly violative of Section 8, Article 1, of the Federal Constitution, which confers upon Congress exclusive power to regulate commerce among the several States.

As applied to the case at bar, the Act of the State Legislature is applicable to business which is shown by the record to be wholly interstate. The State assumes to compel two interstate carriers to route business over a certain joint line
75 to be created under compulsion, to the exclusion of the lines already created by voluntary contract. Is not assertion of this power assertion of the power to "regulate?" Commerce is traffic. It is intercourse between States for purposes of trade. It includes the products of the several States. It extends to the persons who conduct the traffic and the instruments used. Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between States has commenced. When a State assumes to fix the route by which such traffic must be conducted—assumes to compel carriers to furnish cars

76 and transfer facilities for such traffic commands carriers to render gratuitous service to effectuate transportation to certain markets—requires the creation of new lines reaching certain points of destination beyond the borders of the State demands the establishment of joint tariffs over the line thus created, it assumes to "regulate" commerce between States. The very purpose of this proceeding is to regulate charges for tranportation of interstate business, and arbitrarily designate the route over which it shall be carried.

In the case of *Wabash, &c., Railway Co. vs. Illinois, 118 U. S., pp. 571-573*, Mr. Justice Miller, in delivering the opinion of the Court, quoted with approval from *Hall vs. De*
77 *Cuir, 95 U. S., 485*, as follows:

"The line which separates the powers of the States from this exclusive power of Congress is not always distinctly marked, and oftentimes it is not easy to determine on which side a particular case belongs. Judges not unfrequently differ in their reasons for a decision in which they concur. Under such circumstances it would be a useless task to undertake to fix an arbitrary rule by which the line must, in all cases, be located. It is far better to leave a matter of such delicacy to be settled in each case upon a view of the particular rights involved. But we think it may safely be said that State legislation which seeks to
78 impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the State, but directly upon the business as it comes into the State from without, or goes out from within. While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. * * * It was to meet just such a case that the com-
79 mercial clause in the Constitution was adopted. The river Mississippi passes through or along the borders of ten different States, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay, more, it could prescribe rules by which the carrier must be gov-
80 erned within the State in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other, another. Commerce cannot flourish in the midst of such embarrassments."

The opinion in the case cited proceeds as follows: (p. 572-573).

"The applicability of this language to the case now under consideration, of a continuous transportation of goods from New York to Central Illinois, or from the latter to New York, is obvious, and it is not easy to see how any distinction can be made. Whatever may be the instrumentalities by which this transportation from the one point to
81 the other is affected, it is but one voyage, as much so as that of the steamboat on the Mississippi River. It is not the railroads themselves that are regulated by this act of the Illinois Legislature so much as the charge for transportation, and, in language just cited, if each one of the States through whose territory these goods are transported

can fix its own rules for prices, for modes of transit, for times and modes of delivery, and all the other incidents of transportation to which the word 'regulation' can be applied, it is readily seen that the embarrassments upon interstate transportation, as an element of
82 interstate commerce, might be too oppressive to be submitted to. 'It was,' in the language of the court cited above, 'to meet just such case that the commerce clause of the Constitution was adopted.'

It cannot be too strongly insisted upon that the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the State might choose to impose upon it, that the commerce clause was intended to secure. This clause giving to Congress the power to regulate commerce among the States and with foreign nations, as this Court has said before, was among the most important of the subjects which prompted the formation of the Constitution. *Cook v. Pennsylvania, 97 U. S. 566, 574; Brown v. Maryland, 12 Wheat. 419,*
83 *446;* and it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the States which was deemed essential to a more perfect union by the framers of the Constitution, if, at every stage of the transportation of goods and chattels through the country, the State within whose limits a part of this transportation must be done could impose regulations concerning the price, compensation, or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce."

84 The reservation to Congress of the right to regulate commerce between the States is one of the most important reserved powers, and at the same time one most liable to encroachment. The opportunity for plausible argument as to what constitutes "regulation" affords encouragement to the enactment of laws which, by their terms, appear limited to legitimate purposes, but by application and construction infringe upon the prerogatives of the general government. The application of the Act under consideration is, in this case, to interstate commerce solely, and the question is here presented whether the requirement of compulsory connection be-
85 tween competing carriers, and the establishment of involuntary contract relations affecting the route, the earnings and the tariff of each, is or is not "regulation of commerce" between States. The ingenuity of legislators is taxed to frame laws which assume to confer upon State governments the absolute control of corporate property, and yet escape technical conflict with the language of the Federal constitution. Seventy-five years ago Mr. Chief Justice Marshall said in *Gibbons vs. Ogden, 9 Wallace, 222 (6 Curtis, 23):*

"Powerful and ingenious minds, taking as postulates that the
86 powers expressly granted to the government of the Union, are to be contracted by construction into the narrowest possible compass, and that the original powers of the States are retained, if any possible construction will retain them, may, by a course of well-digested but refined and metaphysical reasoning founded on these premises, explain away the Constitution of our country, and leave it a magnificent structure indeed, to look at, but totally unfit for use. They may so entangle and perplex the understanding as to obscure principles which were before thought quite plain, and induce doubts where, if the mind
87 were to pursue its own course, none would be perceived. In such a case it is peculiarly necessary to recur to safe and fundamental

principles to sustain those principles, and, when sustained, to make them the tests of the arguments to be examined."

The act of the State Legislature is clearly an ill-disguised attempt to control and regulate interstate traffic. In truth, it assumes an authority in which little can be found wanting to constitute complete and detailed regulation. The State assumes to select and control the routes, the agencies, the vehicles, the points of transfer, the transfer of merchandise
88 and the rates. Like laws in adjoining States would leave but little for Congress to regulate.

Respectfully submitted,

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No. 28.

FILED
OCT 8 1900
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

Add'l. Brf. of Clarke for P. E.

October Term, 1900.

Term No. 28.

Filed Oct. 8, 1900.

THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JACOB F. JACOBSON, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

ADDITIONAL BRIEF OF PLAINTIFF IN ERROR.

ALBERT H. CLARKE,
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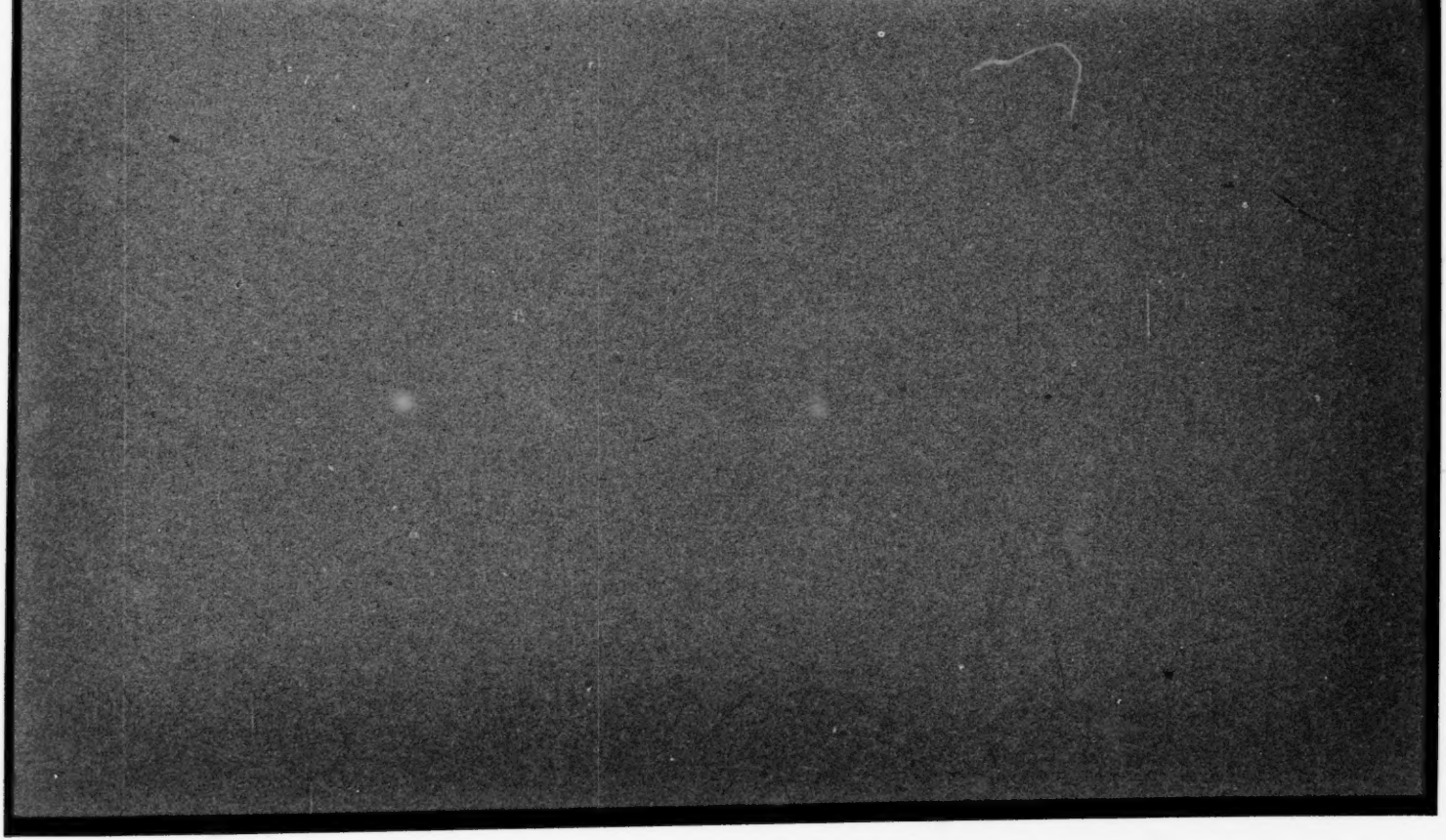

SUPREME COURT OF THE UNITED STATES.

October Term, 1900.

Term No. 28.

THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JACOB F. JACOBSON, DEFENDANT IN ERROR.

ADDITIONAL BRIEF OF PLAINTIFF IN ERROR.

This case was submitted at the October, 1899, term. The submission was subsequently set aside, with a request for further argument. So far as I am advised, the Court has not suggested a limitation of the re-argument to any particu-
2 lar question; but has invited counsel to submit additional argument upon the whole case. There is, substantially, but a single issue. The case involves the constitutionality of Chapter 91 of the General Laws of Minnesota for 1895. For convenience in reference, and argument, the whole act is here reproduced. It reads as follows:

CHAPTER 91.

An act to amend chapter ten (10) of the General Laws of eighteen hundred and eighty-seven (1887), entitled an act to regulate common carriers, and creating the Railroad and Warehouse Commission of
3 the State of Minnesota and defining the duties of such commission in relation to common carriers.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That section three (3) of chapter ten (10) of the General Laws of eighteen hundred and eighty-seven (1887) be amended so as to read as follows:

SEC. 3. (A) That all common carriers subject to the provisions of this act shall provide at all points of connection, crossing or intersec-

tion at grade, where it is practicable and necessary for the interests
4 of traffic, ample facilities by track connections for transferring any cars used in the regular business of their respective lines of road from their lines or tracks to those of any other common carrier whose lines or tracks may connect with, cross or intersect their own, and shall provide equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivery of passengers, property and cars to and from their several lines and those of other common carriers connecting therewith, and shall not discriminate in their rates or charges between such connecting lines or on freight coming over such lines; but this shall not
5 be construed as requiring any common carrier to furnish for another common carrier its tracks, equipment or terminal facilities without reasonable compensation; that each of said connecting lines shall pay its proportionate share for the building and maintenance of such tracks and switches as may be necessary to furnish the transfer facilities required by this act, and in case they cannot agree on the amount which each line shall pay, then said amount shall, upon application by either party, be determined and adjusted by the Railroad and Warehouse Commission, and either party shall have the right to appeal from the order of said commission fixing the amount so to be
6 paid, to the district court of the county where said transfer facilities are furnished, by serving a notice in writing on the adverse party within ten (10) days after the making and filing of such order by said commission, and upon the service of such notice there shall be pending in said district court a civil action for the adjustment and determination of the amount to be paid by each carrier for the expense of the building and maintenance of said transfer facilities. Pleadings shall be made and filed in said action in conformity to those required by law and rules of practice in said court, and said cause shall be
7 tried in the manner provided for the trial of civil actions in the district courts of this State.

(B) All railway companies doing business in this State shall, upon the demand of any person or persons interested, or upon demand of the Railroad and Warehouse Commission, establish reasonable joint through rates for the transportation of freight between points on their respective lines within this State.

Carload lots shall be transferred without unloading from the cars in which such shipments were first made, unless such unloading into other cars shall be done without charge therefor to the shipper or
8 receiver of such carload lots, and such transfer shall be made without unreasonable delay, under such contract arrangements as such connecting companies may make, or under such rules as the Railroad and Warehouse Commission may prescribe, as hereafter provided in this act.

Less that carload lots shall be transferred into the connecting railway cars at cost, which shall be included in and made a part of the joint rates adopted by such railway companies, or established as provided by this act. When shipments of freight to be transported between different points within this State are required to be carried
9 by two (2) or more railway companies operating connecting lines, such railway companies shall transport the same at reasonable through rates, and shall at all times give the same facilities and accommodations to local or state traffic as they give to interstate traffic over their lines of road.

(C) In the event of that said railway companies fail to establish through joint rates, or fail to establish and charge reasonable rates for such through shipments, or fail to establish between themselves the rates and terms upon which cars of one company shall be transferred in such through shipments from the line of one company to the
10 other and returned, or fail to provide for the convenient and prompt transfer of such through freight from the cars of the receiving company to those of the connecting line, it shall be the duty

of the Railroad and Warehouse Commission of this State, and said commission is hereby directed, upon the application of any person or persons interested, to establish reasonable joint rates for the shipment of freight and cars over any two or more connecting lines of railroad in this State, and to prescribe the reasonable rules under which any such cars so transferred shall be returned; and in establishing, changing or revising any such rates they shall take into consideration the average of rates charged by said railway companies operating such connecting lines for joint interstate shipments for like distances.

The rates established by said commission shall go into effect within ten (10) days after the same are promulgated by said commission, and from and after that time the schedule of rates so established shall be prima facie evidence in all courts of this State that such rates are reasonable through rates for the transportation of freight and cars upon the railroads for which such schedule has been fixed.

(D) Before the promulgation of such rates or rules, as above provided, the Railroad and Warehouse Commission shall notify the companies interested in the schedule of joint rates fixed by them, and they shall give said railroad companies a reasonable time thereafter to agree upon a division of charges provided for in such schedule; and in the event of the failure of the railway companies to agree upon such division and to notify the Board of such agreement, said commission shall, after a hearing of the companies interested, decide the same, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by the commission shall, in all controversies or suits between the railroad companies interested, be prima facie evidence of the just and reasonable division of such charges.

(E) Every unjust and unreasonable charge for the transportation of freight and cars over two or more railroads in this State is hereby prohibited and declared to be unlawful, and every company or person violating the provisions of this section shall be subject to the penalties prescribed in section twelve (12) of the original act to which this act is amendatory.

(F) Nothing herein contained shall be construed as requiring any railroad company to send its cars over the line of railroad of another company when its own line of railroad runs to and reaches the point of destination or the point of connection with another railroad on which such point of destination is located, or to use its track or terminal facilities at terminal points for the handling of cars or traffic of another or competing company; *provided*, that in no case shall the charges for transportation exceed the established through joint rates between any two points.

(G) Whenever any property is received by any common carrier subject to the provisions of this act to be transported from one place to another within this State, it shall be unlawful for such common carrier to limit in any way, except as stated in its classification schedule, hereinafter provided for, the common law liability with reference to such property, while in its custody as a common carrier; such liability must include the absolute responsibility of the common carrier for the acts of its agents in relation to such property.

SEC. 2. That subdivision "B" of section nine (9) of chapter ten (10) of the General Laws of one thousand eight hundred and eighty-seven (1887) is hereby amended by striking out all after the word "office" in line twelve (12) of said subdivision 'B," and substituting therefor the following, to-wit:

Said commissioners shall not, while holding office under this act, be interested in any stock or bonds of any common carrier or in any contract for construction, repair or maintenance of any railroad, or ac-

cept any retainer or employment from any common carrier under the jurisdiction of said commission.

17 No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission.

SEC. 3. That subdivision "D" of section fifteen (15) of chapter ten (10) of the General Laws of one thousand eight hundred and eighty-seven (1887), as amended by chapter one hundred and six (106) of the General Laws of one thousand eight hundred and ninety-one (1891), is hereby amended by inserting in line two (2) of said subdivision "D," after the word "commison," the words, "or any party to any proceeding before said commission and affected by its order."

18 SEC. 4. This act shall take effect and be in force from and after its passage.

Approved April 25th, 1895.

The act should be construed as an entirety; framed, as it is, with the evident purpose to invest the State Railroad and Warehouse Commission with authority to enforce performance in detail, and severally, of the several and successive acts requisite to the compulsory establishment of a traffic line made up of the railroads of two, or more, independent carriers, over which merchandise is to be transported under a

19 joint through tariff, to be fixed by the commission; which body is, by the act in question, invested with authority to apportion and divide joint earnings, under the tariff, between the carriers who are entitled to participate. The act goes even farther than this. The power thus conferred is not limited to the compulsory and arbitrary establishment of joint tariffs between railroads having tariff contracts and physical connections, by which performance of the order of the commission is made possible, but it assumes to authorize the commission to compel the construction of connecting tracks between all intersecting railroads, at any or all points of

20 intersection; to compel the transfer of freight; to oblige one carrier to deliver its rolling stock to the carrier with whose tracks such compulsory connection is made, and to transfer less than car load lots at actual cost. This case is one wherein the commission made its order for the construction of a connecting track. Another case, now before this court, for submission at the present term (The Minneapolis & St. Louis Railroad Company, Plaintiff in Error, vs. The State of Minnesota ex rel. The Railroad and Warehouse Commission, Term No. 381), involves the right of the commission, under the same act, to make and divide a through joint rate.

21 The two cases considered together, presents substantially all the questions which can arise under the provisions of the act, and furnish a test of its validity as an entirety. That the act is framed for one specific purpose, and that the construction and application of each sub-division involves the construction and application of the whole, seems reasonably certain. The chapter is simply a re-enactment and amendment of a single section of the original act creating the Railroad and Ware-

house Commission, and defining its duties. This section relates wholly to one subject; the compulsory connection of the tracks of different carriers and the establishment of a
22 joint line over the tracks of two or more carriers. The enforcement of track connection is a step preliminary and preparatory to the establishment of the joint through rate. Authority to make and enforce the joint tariff, is essential to afford results from the construction of the track; and I submit that the consideration of the provision authorizing the order to build the connecting track, brings the whole section, which constitutes the whole chapter, before the court.

The purpose and validity of a statute can be best determined by the possible results of its enforcement. That which manifestly *can* be done under its provisions, must be
23 taken to represent the purpose of its enactment. If that which can be done in pursuance of a law, is violative of a constitutional provision, the law itself must, perforce, be invalid.

We hold the law to be invalid for the following reasons:

It is violative of the Fourteenth Amendment to the Federal Constitution, in that it abridges the privileges and immunities of the plaintiff in error as a citizen; denies to it the equal protection of the laws, and deprives it of its property and the use thereof, without due compensation, or due process of law. It denies it the right of contracting with refer-
24 ence to its own business. It compels the plaintiff in error to enter into involuntary, unreasonable and unprofitable contracts with other carriers, the effect of which is to reduce the revenue of the plaintiff in error, deprive it of its business, lessen the earning capacity of its property and diminish the value of its investment. It violates the charter contract between the plaintiff in error and the State, and assumes to regulate interstate traffic and commerce.

That a railroad corporation is a citizen, has been many times decided; that it is possessed of the same property rights as the individual citizen seems to be conceded, theoretically, by the State courts, but denied when claim is made for
25 actual and practical recognition. The corporate citizen possesses, in common with the individual citizen, all rights guaranteed by the constitution. There should be, and can be rightfully, no dividing line between the constitutional rights of the corporation and the individual. They are alike, "persons" and "citizens." In the case of the corporation as well as that of the individual, the constitutional guarantee of personal right must be read "in the spirit of the Declaration of Independence," which, as was said by Mr. JUSTICE BREWER, "is the thought and spirit" of which the Constitution is the "body and letter." As the same learned Judge said in
26 *Railway Company vs. Ellis, 165 United States, page 154*, "the rights and securities guaranteed to persons by that

instrument, cannot be disregarded, in respect to those artificial entities called corporations, any more than they can be in respect to the individuals, who are the equitable owners of the property belonging to such corporations. A State has no more power to deny to corporations, the equal protection of the law than it has to individual citizens."

Nor has the State any greater, or different control over the property of the corporate citizen than it has over that of the individual.

The right of State regulation is not conferred by, or
27 dependent upon the question of corporate or individual ownership, but by the nature and character of the use. Whether property be owned by a corporation or an individual, is immaterial as regards the question of State control. In either case, the manner of its use is, without regard to the character of the property itself, subject to *reasonable* State regulation.

II.

The Act assumes to deprive the Plaintiff in Error of the control of its own property. The right of Control is one of its most valuable property rights.

Property has value in proportion to its productiveness. Productiveness is dependent, largely, if not wholly, upon control. The right of control, is the most valuable incident to the ownership of property. This statement is particularly true, as applied to income producing property. As applied to railroads, which are created, constructed and operated
28 with the sole purpose of producing revenue, the statement is axiomatic. To deprive a railroad company of the power to control its own property, to take away its right to select the carriers with which it will enter into traffic contracts; to deny to it the right to avail itself of the best bargain it can make in the way of division of joint earnings, where competition between connecting carriers makes it possible to contract to its own advantage; to arbitrarily fix a point at which it may be compelled to divert traffic, which it has originated, to the line of another carrier competing in the same territory for the same business, and thus deprive
29 the initial carrier of the long haul over its own rails (an advantage which it could secure, if permitted to make its own contracts), is to diminish, and in many cases destroy the value of the property. Railroads are operated upon business principles; and in order to operate them safely and remuneratively, their managers must have the same freedom to contract and to take advantage of business and commercial conditions, as that possessed by an individual in his personal and smaller business. The corporation is but the representative of individual interests and individual rights; and these rights, though united, are not extinguished by the consolidation. By the act of the Legislature of Min-

30 nesota, the State proposes to assume the control of the operation of the railroads within its borders, without assuming responsibility to the individuals whose property it destroys. Assuming the right and power to control and distribute corporate property for individual benefit, without cost to itself, the State declares its right to render the property of the plaintiff in error valueless and unproductive of revenue, by obliging it to exercise its corporate franchise in the construction of a track to be utilized for the surrender of its business to a competitor. Our railroad extends from St. Paul, westerly to Hanley Falls, a distance of 147 miles,
31 where it crosses the railroad of its co-defendant; thence, still westerly, 50 miles to the west line of the State. Shipments of stock originating on its line west of Hanley Falls are transported over its own railroad to St. Paul and Minneapolis, and there delivered to its connecting carriers. It is ordered, by the State, that this company shall buy or condemn land at Hanley Falls, not to improve, but to destroy its business, and build thereon a track connecting its railroad with that of a competing line; to the end that its stock business originating at points between Hanley Falls and the westerly State line (a total distance of 50 miles) may there be diverted from its
32 own railroad, thus depriving it of the long haul on all Sioux City and Omaha business. Compliance with the order of the commission would mean a material reduction of revenue. It reduces the haul of stock shipments from a possible 197 miles, to a possible fifty miles. By the enforcement of this order all competition is made impossible. Our business is taken away and turned over arbitrarily to another carrier. If either or both carriers decline to join in a traffic agreement, the commission may, under this act, establish an enforced partnership between them; make a joint through tariff; divide the earnings; compel an interchange of cars,
33 and, in brief, control and operate the railroad property. The effect of the exercise of this power is far reaching and disastrous. On one hand the carrier is called upon to furnish and maintain the complete transportation facilities which are demanded by present conditions. Those conditions call for skilled and expert labor, and the expensive and complicated instrumentalities indispensable to modern railway equipment. Unless these are supplied, the police power of the State is properly invoked to enforce their installation at the cost of the carrier. On the other hand, reduction of revenue, and diminished earning capacity, brought about by the establish-
34 ment and enforcement of non-compensatory tariffs, and diversion of traffic by arbitrary laws which destroy the value of corporate franchises, all done under the guise of State "regulation," necessitate reduced wages, employment of cheap labor and cripples an industry which furnishes employment to thousands of individual citizens.

"Liberty," declared by the Declaration of Independence to be the inalienable birthright of all men; guaranteed by the

constitution; for which the nation has sacrificed much blood and treasure, consists of something more material than a name. It is more than shadow; it is substance, and substantial. It confers upon the owner of property, purchased and paid for, something more tangible than theoretical and nominal ownership. It represents the right to possess; the right to use; the right to control; dominion; proprietorship. It represents the right to reap where one has sown; the right to
35 receive substantial profit from legitimate investment; the right to earn money by the use of property for the purpose for which it was designed and constructed; the right to secure and transact business; the right to the benefits of individual and corporate energy and enterprise. The guaranty of personal liberty is not met by a grant of the right to construct these great thoroughfares, in which there has been invested more than ten thousand millions of dollars, and the subsequent delegation to the political government of the State, of their control and management.

One effect of a physical connection between intersecting
36 railroads, at any given point, is to enable each to draw business from the territory of the other. In some cases the connection may be to the advantage of both; as it might furnish access to market, for certain products otherwise unmarketable, and result in increased production and additional revenue. In other cases the connection might build up the business of one carrier, and prove destructive to that of the other. This would be true where both companies were competitors for the same traffic to be transported over their respective roads to different destinations. In such cases the business of one is necessarily drawn from the other, and a
37 carrier, having constructed its railroad, should be permitted to exercise such control over its road and franchises, as will enable it to operate it to its own financial advantage. The co-defendant, The Willmar & Sioux Falls Railway Company, is a part of the Great Northern Railway. Track connection at Hanley Falls would make all stations upon our line tributary to its stock markets at Sioux City and Omaha, to the south, and its wheat markets at West Superior and Duluth to the north. Our railroad leads to the cities of Minneapolis and St. Paul, and our earnings are dependent upon transportation over our own railroad. To
38 reduce the volume of transportation and shorten the haul is destructive of our revenue, and ruinous. With the right to control our own property we can protect and preserve it. With the control placed in the hands of the Railroad and Warehouse Commission, its preservation is impossible.

The *control* of these great commercial highways, con-
39 structed by private capital, and by a combination of individual resources, is *property*. Deprivation of *control*, is deprivation of *property*. If this be effectuated by enforcement of a law which violates the constitution, it is not "due

process of law." An unconstitutional law is *void*. It is *no* law. It is a nullity.

Norton vs. Shelby County, 118, U. S. 425, 442.

Legislation of this class has already gone beyond the limit of safety. Legislators, selected from the body of the people,—unacquainted with constitutional limitations
40 upon State powers, not comprehending the dangers resulting from the disregard or invasion of the rights of property, have been led to enact laws, which, if enforced, will be destructive of personal rights and subversive of the Constitution. Under the guise of an exercise of the police power, necessarily vested in municipal governments, legislatures have, step by step, encroached upon personal rights.

Mr. JUSTICE BRADLEY said, in *Boyd vs. United States, 116 U. S., 616, 635:*

"Illigitimate and unconstitutional practices get their first footing by silent approaches and slight deviation from legal modes of procedure. This can only be obviated by adhering to the rule that
41 constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizens and against any stealthy encroachments thereon. Their motto should be *obsta principiis.*"

Railroad Commissioners have been, by statute, invested with plenary powers of control over the almost countless millions invested in American railroads. These administrative bodies, acting in good faith, and wrestling earnestly with the complicated and ever varying transportation problems
42 which have long puzzled the minds of the experienced and expert traffic managers of the continent, find no near approach to a solution of the problem of cheap transportation other than practical confiscation of property by destruction of its earning capacity. Several States have enacted laws identical in purpose, and nearly identical in language, with the act in question. In Nebraska, the Supreme Court of that State held such a law to be violative of the Federal Constitution and void.

State ex rel. etc., vs. Railroad Co., 46 Nebraska, 682.

43 Iowa, having first sustained a similiar act of its own legislature disaffirmed its approval in *Railway Co. vs. Dey, 56 Northwestern Rep., 271.*

It is not the purpose of the writer of this brief to question the right of the State to reasonably *regulate* railroad operation. Such right is conceded. It is the common law right

and duty of municipal governments to protect its citizens against extortionate and exhorbitant charges; to see that persons and property are transported at reasonable rates and with safety and dispatch. The proper management of railroads; the proper and safe operation of trains; the furnishing of proper facilities to meet the necessities and reasonable convenience of the public are proper subjects of State regulation. But "regulation" is not "control." Step by step the right to "regulate" has been broadened by erroneous and unlawful construction until it has come to be assumed that regulation and control are synonymous. Every railroad carrier is invested with some rights which are as purely personal to the corporation, and as inviolate, as the personal rights of individual citizens. Quoting again, the language of MR. JUSTICE FIELD, in the *Santa Clara* case,

> "The doctrine of unlimited power of the State over corporations, their franchises and property, simply because they are created by the State, so frequently and positively affirmed by counsel, has no foundation whatever, in the law of the county. By the decision of the Supreme Court of the United States in the Dartmouth College case, it was settled, after great consideration, that the charter of a corporation, under which its franchises—its capacity to do business and hold property is conferred, is a contract between the corporators and the State, and therefore within the protection of the federal constitution prohibiting legislation impairing the obligation of contracts. So far from the State having unlimited control over the franchises and property of corporations, because of its paternity to them, it has under that decision *only such as it possesses over the contracts and property of individuals.*"

Among the rights guaranteed to this plaintiff in error is the essential and fundamental right to control and manage its own property. Being a common carrier and a public servant, it may be compelled to receive and transport over its own line any merchandise tendered to it by either an individual or by a connecting carrier; but it cannot be compelled to enter into a general traffic arrangement with another carrier, for the establishment of a new joint line of transportation. A line of this character, voluntarily established, becomes at once subject to reasonable State regulation; but compulsory establishment of a joint line is quite different from regulation of a line voluntarily established. If two individuals enter into a copartnership, such copartnership becomes at once subject to all general laws relating to partnership business. It will not be claimed that the *establishment* of a copartnership could be enforced by law. A corporation, doing business as a common carrier, may exercise the same control over its own property and business, as an individual. The fact that particular methods of transacting its business might benefit certain of its patrons, furnishes no reason for investing the State with authority to compel it to adopt such methods.

III.

The Plaintiff in Error cannot be compelled to exercise its franchise beyond its own line.

The order of the commission not only requires the plaintiff in error to exercise its corporate franchise in the construction of an instrumentality to be used in the destruction of its own business, but calls for the purchase or condemnation of land outside its right of way, upon which to construct it. It is, perhaps, true that a railroad corporation can be
49 compelled to exercise the power of eminent domain in order to enable it to perform a duty which it owes to the public, in connection with the exercise of the franchise which the State has granted. But a railroad company cannot be *compelled* to exercise its franchise beyond its own line, or outside its own property.

Illinois ex rel. Hempstead vs. Railway Co., 55 Illinois, 95.

The connection is not, in any sense, necessary to the proper exercise of our franchise. The only reason that
50 can be urged for its enforced construction, is the fact that it will accommodate a few individuals in the vicinity of the point of intersection. Concede the fact to be as stated; does the acceptance of its franchise obligate a railroad company to construct tracks to afford the citizens of certain localities a shorter route to market than that which is afforded by its own located and constructed road? If so, to what extent can this obligation be extended? When required to build a track, not required for its own use, a single rail length outside its own property lines, thus admitting the obligation and
51 establishing the principle of the State control, where does the liability cease,and at what point is the obligation satisfied? If the same results, viz: individual accommodation, and more direct and convenient access to market, could be secured by the construction of a railroad to a point of connection with another railroad one mile distant, why cannot its construction be enforced? If one mile, why not ten miles? If this power and authority is vested in the State, why may it not compel all railroads to be united in one vast system operated under joint rates to be made and divided by the
52 Railroad and Warehouse Commission? If the plaintiff in error may be compelled to acquire an acre of land to be used to accomplish compulsory track connection, why may it not be compelled to acquire land for the same purpose to a greater extent? But the law is not satisfied by compliance with these requirements. It goes still farther in its assumption of State control over private property. It provides that,

"Car load lots shall be transferred without unloading from the cars in which such shipments were first made, unless such unloading

into other cars shall be done *without charge therefor* to the shipper or receiver of such car load lots. * * * Less than car load lots
53 shall be transferred into the connecting railway cars *at cost*, which shall be included in and made a part of the joint rates adopted by such railway companies, or established as provided by this act."

By this provision, the State assumes authority to control the movement and use of equipment. The initial carrier is required to turn its cars over to the connecting carrier at the point of intersection. The connecting carrier is, in turn, required to deliver the cars of the initial carrier to *its* succeeding carrier; for the law requires the transportation to be
54 continuous in the cars "in which such shipments were first made." If this law is constitutional and can be enforced in Minnesota, it may be enforced in all other States. To stop cars at State lines and there transfer their contents is admittedly impracticable. The enactment of similar statutes by other states would make it impossible for a railroad carrier to control or preserve its own rolling stock. A car would be but a link in an endless chain. Its owner would have no control over its movements and little knowledge as to its whereabouts or ultimate destination. Every carrier has the right to limit the use of its rolling stock to its own line. Its rolling
55 stock, in fact and in law, constitutes a part of its railroad. It cannot be obliged to deliver it to other carriers who may be wholly irresponsible, nor can it be mulcted in damages, equal to the cost of transferring shipments, as a penalty for refusing to lend or lease its cars to another carrier. Like other property owners, citizens of the United States, it has property rights for which it has the right to demand recognition and protection. Among these, is the right to *control its own property*.

Mr. Justice FIELD held, in *Oregon Short Line, etc., Co. vs. Northern Pacific R. R. Co., 51 Fed. Rep., 470*, that neither at common law nor under the Interstate Commerce Act can a railroad company be compelled to haul the cars of another
56 company over its line when it has cars of its own which it desires to use for the transportation of traffic; nor can one carrier be required to advance or assume payment of the freight charges due a preceding carrier. Such matters are regulated by contract.

It is held in *Railway Co. vs. Railway Co., 41 Fed. Rep., 562*, that a court cannot require a railroad company to contract with another carrier engaged in like traffic, for a joint through routing and joint through rate, nor can the court make such a contract for the parties.

And see:

57 *Railway Co. vs. Osborn, 52 Fed. Rep., 914.*
Railway Co. vs. Railway Co., 59 Fed. Rep., 400.
K. & I. Bridge Co. vs. Railway Co., 37 Fed. Rep., 625.

IV.

The act of the State Legislature deprives the Plaintiff in Error of the right to contract relative to its own business.

One of the most important incidents of railway operation is the making of judicious traffic contracts with other carriers. Rairoad corporations, like individuals, have the right to choose their own business associates. The responsibility of the
58 connecting carriers, their methods of doing business, the manner in which the joint earnings are divided, etc., are matters which figure prominently in traffic agreements. No law which presumes to compel a carrier to enter into involuntary contract relations with another, is valid. If two or more carriers by voluntary arrangement, create a joint line composed of parts, or all, of the railroads of the several carriers, the State may see that the rates charged for transportation over such joint line are reasonable. *It cannot determined how such joint earnings shall be divided between the carriers.* That is a matter of private right, with
59 which the State has no concern. If the shipper pays no more than a just and fair rate, it is immaterial to him, or to the public, how the earnings under such joint rate are divided. No legal excuse, or occasion, can arise for the exercise of the assumed power to enforce the making of a joint tarriff. The local rate of each carrier must be reasonable. This the State compels. Every carrier must accept merchandise tendered to it for carriage. This the law compels. The sum of two reasonable local rates cannot be unreasonable. The shipper can therefore have his goods transported at reasonable rates without a joint through rate. The carriers
60 *may* make a joint rate; they cannot be *compelled* to do so. They *may* make a joint through rate less than the sum of the reasonable local rates; they cannot be *compelled* to do so. They may *contract* to connect their tracks and create a joint line; they cannot be *compelled* to do so. Each, or either, may *contract* to accept and use the rolling stock of the other; each, or either, may *contract* to send its cars over the tracks of the other; but cannot be *compelled* to do so. These are all matters of private contract. The right of a citizen to contract, relative to his own business, is both a property right and a right of personal liberty, and cannot
61 be taken away.

The Fourteenth Amendment to the Federal Constitution secures, not only the right of the citizen to be free from mere physical restraint of his person, but to be free in the employment of all his faculties; to use them in all lawful ways; to live and work where he will, and earn his livelihood in any lawful manner; to pursue any livelihood or avocation, and for that purpose to enter into all contracts that may be proper, neccessary and essential to his carrying out the purposes above mentioned. These rights are inalienable.

United States vs. Sweeney, 95 Fed. Rep. 450.
62 *Allgeyer vs. Louisiana, 165 U. S. 589.*

There are certain fundamental rights, possessed by every citizen, which are recognized in the organic law of every State. A statute which violates any of these rights is unconstitutional and void. The right to acquire and possess property includes the right to contract. This right was not created or conferred by the constitution. It is one of those fundamental rights, older than any written law, the existence of which is presupposed as the basis of political government. It is one of those existing and fundamental rights, the continuance of which is guaranteed by the constitution; not
63 created by it. The owner of property has a right to its independent enjoyment, subject only to the reasonable regulation necessary to prevent its use to the injury of others. This cannot be had, if he be deprived of the right to contract in relation to its use.

"The law of contracts," says Mr. Parsons, "may be regarded as including nearly all the law which regulates the relations of human life. Indeed, it may be looked upon as the basis of human society. All social life presumes it, and rests upon it; for out of contracts grow all rights, all duties, all obligations, and all law." The exercise of the right to contract enters into every transaction of business or social life, and cannot be
64 limited or controlled by legislation except where its exercise conflicts with public policy or is violative of law.

The effect of the statute under consideration is to deprive the plaintiff in error of the right, (1) to control its own business; (2) to make its own traffic contracts; (3) to select the carriers with whom it will enter into traffic agreements; (4) to determine whether or not it will join other carriers in the creation of joint lines; (5) to charge and collect its own reasonable local rate for the transportation of property over its own line, to the point of intersection with the road of a connecting carrier; (6) to determine and decide whether or not it will de-
65 liver its own rolling stock to a connecting carrier for use upon other railroads; (7) to select the connecting carrier to whom it will deliver goods committed to its care for transportation beyond its own line; by reason of which it is without security for the safety of the goods, or its own charges for transportation. The enforcement of this law leaves the carrier absolutely without any control over its own business. It is settled that one carrier cannot be compelled to advance the charges earned by the preceding connecting carrier. By the compulsory delivery of its cars, and their contents, to the intersecting line, as contemplated by this act, it loses con-
66 trol of its own cars, the goods transported, and the ability to collect its own earnings. Under this law it must accept the agency of the connecting carrier to collect its charges, or, if it demands payment in advance, it must assume to act as the collecting agent of such connecting carrier.

V.

The State has no power to establish contract relations between Carriers, by statute, and prosecute suits, in its own courts, to enforce their specific performance.

Another serious question involved, is as to the power of the State to compel the carrier to take *affirmative* action. The State, having granted to a body of individuals the franchise to be a corporation and the franchise to do certain
67 acts, may forfeit the franchises and withdraw the privileges if they are not exercised. If a railroad corporation fails to comply with the valid laws of the State, it may be subjected to lawful penalties and punishments, like any other citizen. If it is guilty of an affirmative act of wrong doing, it is liable to punishment. But this law contemplates a complete departure from the usual methods, and assumes the right of the State to compel railroad carriers to enter into involuntary contracts; or, to state it more correctly, to enter into relations with other carriers which can be voluntarily assumed by contract, only. The right of personal choice,
68 and the exercise of personal judgment is entirely taken away. The remedy is to *compel performance;* not punish non-performance. Liberty of action,—the exercise of personal discretion is not recognized or admitted. The law provides simply for *compulsory compliance*. The State says to the carrier—"Make a traffic agreement with the owner of every intersecting line; connect your railroad with every intersecting railroad; agree upon joint tariffs; agree upon a division of earnings; divert your traffic to other lines; lend or lease your rolling stock to other carriers; look to them to collect
69 your charges and to take charge of your patron's property,—and—if you decline to do these things the State will *compel* you to do them."

Courts of equity may compel the specific performance of contracts, but have never, so far as I can determine, conferred upon a State or court the power to *make* contracts between third parties, and then enforce specific performance. The right of a State to enforce the exercise of the power of eminent domain, or to compel the exercise of corporate franchises, has never been established. The case cited from 83 Missouri, page 144, involved only the exercise of the police
70 power; and is well distinguished by the following language of Mr. JUSTICE BREWER in *State vs. Railroad Company, 32 Federal Reporter, page 724.*

"So, I think, though without attempting to formulate a rule therein, a distinction will be drawn between cases in which the police power is invoked simply to regulate the use of property, and those in which a demand is made for the expenditure of money. It is one thing to require a railroad company to stop its trains at a given point; it is another to require it to go to the expense of building a depot at that point. One means nothing but the manner of use; the other calls for

an outlay of money. Much larger liberty will be accorded to the legislature in one direction than in the other. I do not mean to assert that the police power does not extend to any cases of the latter nature;
71 I simply affirm that the courts will put narrower boundaries upon an attempted exercise in this direction."

A reading of the syllabus in the case of the *Railway Company vs. the Railway Company, 109 Illinois, 135,* might lead the Court to believe that it was an authority in favor of the proposition that railroad companies can be compelled to haul the cars of other companies. Whatever is said upon that point, is pure dictum. The action was brought by one carrier against another, to recover for a car burned while in the custody of the defendant. The plaintiff corporation hauled a loaded car to the city of Peoria, and placed it upon a
72 transfer track. The defendant took possession of the car and hauled it to a distillery, where it was unloaded. When unloaded it was again taken by the defendant, without orders from the plaintiff, to a sugar refinery, to be reloaded and switched to the transfer track for shipment. On the same day the sugar refinery was burned; also the car. The question as to whether one carrier can be compelled to haul a car for another, was not involved. The defendant had taken the car at plaintiff's request, and it was burned while in the defendant's custody. The defendant was not a railroad carrier; it was a transfer company; its business was to receive
73 and transfer cars for other companies. As stated in the opinion on page 139, the Court says that: "*The proposition of law certified by the Appellate Court, when resolved, involves the single inquiry whether defendant, in the transaction out of which this action arose, bore to plaintiff the relation of common carrier, or was it that of a bailee or that of a warehouseman?*" The Court held that it was a common carrier. It voluntarily accepted the car at the request of the owner. It never refused to accept it. The question as to whether or not it could be compelled to receive it, was not involved. The only question was, that, having
74 voluntarily received it, in what capacity had it been received?

In the Massachusetts cases cited, the defendant railroad companies referred to were created by special charter with the usual reserved power in the Legislature to amend. The Legislature did amend, and the validity of the amendment was the question involved in the cases. The statute in question was one which provided that certain railroads, naming them, should so construct their tracks as to run into a Union Station to be established for the accommodation of the passenger tracks of the Boston & Albany Railroad Company and the four other railroads named. It was not a general law,
75 but was special legislation, applying to certain railroad companies designated by name. The Court held, that, under the reserved power of amendment, the act was properly

enacted. In the first case (109 Mass., p. 103), the Court says (p. 113): "At any rate the Legislature was the exclusive judge as to that matter, and an amendment of the several charters so as to secure such an object was a reasonable exercise of their reserved right. It is no valid objection to such amendments that they require corporations to extend their tracks and to exercise the right of eminent domain for this pur-
76 pose, and to incur additional expense."

This decision, therefore, goes upon the ground:

First. That the power to amend the special charter had been reserved by the Legislature.

Second. That such power of amendment had been exercised by the passage of the act under consideration.

To the same effect is the case in 113 Mass., p. 161. The distinction between the cases cited and the case at bar lies in the fact that there has been no attempt on the part of the Legislature to so amend the charters of the defendant
77 companies as to enable the Legislature to compel them to extend their tracks or build additional tracks. If the power to amend has been reserved, it has not been exercised. In the cases cited it was both reserved and exercised. The point there determined, is that when the Legislature has reserved the right to amend a charter, *and has amended* the charter, the amendment is valid.

The cases did not, so far as I have been able to learn, proceed beyond the State court. I do not think they can fairly be assumed to determine any question beyond the right of the State to exercise a reserved power of amendment, without
78 the consent of the railroad companies. The rule as to the question involved here, is, I submit, that laid down by the Illinois court, in the *Hempstead case* (*55 Ill., 95*), which holds that

"Railroad companies cannot be compelled, as common carriers, to receive goods at stations along their line for transportation, on the requirement of the consignor that they shall, themselves, deliver the goods at a point beyond or off their own line of road; or to deliver goods received by them for transportation, at such point. The
79 legal duty of the companies, in that regard, is commensurate only with their franchise; it is confined to their own line of road, and cannot be made to extend beyond it.

Nor can a railroad company, chartered with certain express powers and privileges, with certain termini within which they are to be exercised, be compelled to purchase, for the accommodation of the public, more extended privileges beyond the limits of their franchise, so that they may deliver goods at points not upon their line of their road, or within its established termini."

80 Enforcement of this law not only involves compulsory physical connection of the railways, and compulsory diversion of traffic, but, to be practical and beneficial, must include the compulsory making and installation of time schedules. Suppose the connecting company has no train passing the junction point into which the car of the initial

carrier can be received; suppose the connecting company has no cars at the place of junction into which the goods can be transferred; suppose the goods are perishable, and the weather is cold or otherwise unfavorable. If there are no cars into which to transfer the merchandise, must the initial carrier
81 side track its own cars, loaded with perishable goods, and permit them to stand upon a side track until such time as cars can be furnished for their reception, risking damage or destruction by frost, and the numerous other dangers to which such property is exposed in the course of transportation, or is it compelled to deliver its own cars, for which it has other use, to the other company? In many instances the expense of a transfer from the cars of one company to another would exceed the revenue received for transportation. The transfer would result in delay of trains, and every railroad company would either be compelled to keep a crew
82 of men at the point of intersection with every other railroad, with side track facilities and a warehouse for the purpose of handling and storing perishable property, or keep the train in which such cars were transported standing upon its line, to the delay of every other train, until its crew could transfer the contents of its cars to the cars of the other company. A practical enforcement of the law leads to innumerable absurdities. Its enforcement involves the confiscation of the property, labor, time and money of every railroad company whose tracks intersect the tracks of any other rail-
83 road company.

VI.

The statute under consideration is violative of the Charter Contract between the Plaintiff in Error and the State.

I doubt whether, upon this branch of the case, I can add anything, of interest, to the suggestions made in my former brief. I desire, however, to emphasize the proposition that the grant and acceptance of a charter *includes a contract* that the corporation organized pursuant to, or created by the charter act, may exercise all powers incident to its business.
84 The franchise to BE, is valueless without the franchise to DO. A franchise to operate a railroad is without value if it cannot be exercised. If a corporation may not retain and carry to destination the traffic which it has originated, and for the transportation of which it constructed its road, of what use is its franchise? If it may not control its own rolling stock, make its own traffic contracts, determine, for itself, whether or not it will unite with certain other carriers in the establishment of joint lines, the operation of which creates close business relations between the parties, make its own contracts for the division of joint earnings, and, in brief,
85 transact its own business, its franchise has no value. Because the free exercise of these powers are necessary to

the enjoyment of the franchise, I urge that they are incident to and are granted with the franchise; that a full and untrammelled right to their exercise is a part of the charter contract.

Respectfully submitted,

ALBERT E. CLARKE,

Attorney for the Plaintiff in Error.

DEFENDANT'S BRIEF

No. 199, 28

Br. & Douglas for D. C.

MAR 12 1900
JAMES H. McKENNEY,
Clerk

SUPREME COURT

Filed Mar. 12, 1900.

UNITED STATES.

OCTOBER TERM, 1899.

No. 199.

THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY,

Plaintiff in Error,

vs.

JACOB F. JACOBSON,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF OF DEFENDANT IN ERROR.

W. P. [illegible], Attorney for [illegible],

Defendant in Error.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1899.

THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY,

Plaintiff in Error,

vs.

JACOB F. JACOBSON,

Defendant in Error,

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF FACTS.

This proceeding was commenced upon the petition of Jacob F. Jacobson, the defendant in error, made and presented to the Railroad and Warehouse Commission of the State of Minnesota, pursuant to chapter 91 of the General Laws of 1895, of which plaintiff in error had notice, and after a hearing upon said petition, at which evidence was introduced by the com-

plainant in support of said petition and by the defendant railroad companies in opposition thereto,

An order was made by the Commission dated June 19, 1896, and signed in behalf of said Commission by its secretary, A. K. Teisberg, directing that said petition be granted, and ordering the defendant railroad companies to forthwith provide at the place of intersection of their roads at Hanley Falls, Minnesota, ample facilities by track connections for transferring any and all cars used in the regular business of their respective lines of road from the line or tracks of one of said companies to those of the other, and to forthwith provide at said place of intersection equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivering property and cars to and from their respective lines, and the order further described the mannner of making the track connections. From this order an appeal was taken to the district court for Yellow Medicine county, and the cause was tried *de novo* before Hon. Gorham Powers, district judge, who filed findings of fact and conclusions of law, which in substance affirmed said order of the Board of Railroad and Warehouse Commissioners, and are to be found on pages 57 to 62 of the record.

Whereupon judgment was entered in the district court of Yellow Medicine county on the 21st day of August, 1897, requiring the defendant in error and the

Willmar & Sioux Falls Railroad Company, impleaded with it, to forthwith provide at the place of intersection of the respective railroads at Hanley Falls, Minn., ample facilities, by track connections, for transfer of any and all cars used in the regular business of their respective lines of road from the tracks of one of said companies to those of the other, and also equal and reasonable facilities for the interchange of cars and traffic between the respective lines, and for the receiving, forwarding and delivering of property and cars to and from their respective lines, and also requiring said companies to put in and construct for the purposes aforesaid at said place of intersection a track of the same gauge as the tracks of said companies.

From this judgment each of said companies appealed to the Supreme Court of Minnesota, and from the judgment of affirmance by the latter court (see Record, page 65) the pending writ of error was duly issued.

Upon the trial of the action in the district court evidence offered on behalf of the complainant, now the defendant in error, was received upon stipulation between the parties, and certain facts were also stipulated between all the parties to said proceedings, a complete statement of which may be found upon pages 55 and 56 of the record.

Recapitulating some material facts stipulated to upon said trial, upon which stress has not been placed, it appears that the Wisconsin, Minnesota & Pacific

Railroad Company, the defendant in error, owns a line of road upon which the village of Hanley Falls is situated, originating at Watertown, S. D., and extending from that point easterly and a little south, partially across the State of Minnesota, to Morton, where it connects with the Minneapolis & St. Louis road, which owns a line from Morton to Minneapolis. By virtue of a traffic and operating agreement through trains are run from Watertown to Minneapolis, although the ownership of the two lines aforesaid is distinct. The Willmar & Sioux Falls Railway Company is also a Minnesota corporation, and owns a line of railway running from Willmar, Minn., to Sioux Falls, S. D., intersecting the said railroad of the defendant in error at right angles at the station of Hanley Falls. The Willmar & Sioux Falls Railway Company is leased by and managed by the Great Northern Railroad Company, and, practically speaking, forms a part of the entire Great Northern system, connecting at Willmar with one of the main lines of the Great Northern, running from Minneapolis northwesterly across Minnesota, and ultimately to the Pacific coast.

Minneapolis is over one hundred miles east and a little north of Hanley Falls, and Sioux City, Iowa, is directly southwest. It is suggested by counsel of the plaintiff in error that the Minneapolis & St. Louis and the Great Northern Railway Companies are competitors for all business originating west of Hanley Falls destined not only to St. Paul and Minneapolis

to the northwest but to Omaha and Sioux City markets to the southwest, and attention is called to folio 101 of the record, in which it appears that the learned trial judge so found in the order of the court preceding entry of judgment. Attention is particularly called to the fact that the Minneapolis & St. Louis road, in this so-called competition for the Sioux City and Omaha markets, is compelled to freight its merchandise upwards of one hundred miles to the northeast, a like distance to the south, and a like distance to the west, to reach Sioux City, while from the station, Hanley Falls, on the direct route, the distance to Sioux City is approximately two hundred miles shorter.

The roads are not competitors between many other points, and upon final determination in the Minnesota courts, the Supreme Court found that "*there is nothing in the suggestion that the two appellants are competing roads within the terms of subdivision F of section 3 of said statute, at least so far as regards the traffic for which the connection in question is required.*" (Record, page 50, folio 122.)

The Railroad Commission and trial court found upon undisputed evidence, that a large amount of cattle were raised upon the line of railway of plaintiff in error west of Hanley Falls, which the owners desired to ship annually to the Sioux City, Iowa, market.

That traffic connection at Hanley Falls would operate to shorten the route 199 miles, and the time of

each trip about thirty-two hours. That an average saving in shrinkage and loss incident to cattle lying down from exhaustion and being killed upon each car approximate $25.00. (Record page 25, folio 45.)

It also appeared that certain lines of the Great Northern Railway connecting with the Willmar & Sioux Falls Railway Company pass through Northern Minnesota, which is densely wooded, and that with traffic connections at Hanley Falls thousands of cords of wood would annually be shipped via the Great Northern Railway to points in Minnesota west of Hanley Falls on the line of the plaintiffs in error at a saving to the residents of from $1.40 to $2.25 per cord. (Record, pages 26 to 30, folios 52 and 53.) That such timbered country is not tributary to the latter line of railway. (Record page 45, folio 46.)

In the opinion the Supreme Court based its decision, requiring a mechanical connection between the railroad companies in question at Hanley Falls, upon the necessity therefor arising from traffic in wood from stations in Minnesota along the line of the Willmar & Sioux Falls Railway. (Record page 67, folio 117.)

The Supreme Court expressly eliminates from the case all questions of interstate traffic. (Id.)

The crossing of the two railroads is at grade, and immediately adjacent to a regular station upon each of said lines of railway.

No evidence was offered by plaintiff in error (appellant) in the district court as to the want of

necessity for the making of this connection, but it rested its case wholly upon the evidence of the witnesses called in behalf of the petitioner upon this point. (Record, page 67, folio 117.)

Section 3 of chapter 91 of the laws of Minnesota for 1895 reads in part as follows:

"That section 3 of chapter 10 of the General Laws of 1887 be amended so as to read as follows:

"Sec. 3. (A.) That all common carriers subject to the provisions of this act shall provide at all points of connection, crossing or intersection at grade, where it is practicable and necessary for the interests of traffic, ample facilities by track connections for transferring any cars used in the regular business of their respective lines of road from their lines or tracks to those of any other common carrier whose lines or tracks may connect with, cross or intersect their own, and shall provide equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivery of passengers, property and cars to and from their several lines and those of other common carriers connecting therewith, and shall not discriminate in their rates or charges between such connecting lines or on freight coming over such lines; but this shall not be construed as requiring any common carrier to furnish for another common carrier its tracks, equipment or terminal facilities without reasonable compensation; that each of said connecting lines shall pay its proportionate share for the building and maintenance of such tracks and switches as may be necessary to furnish the transfer facilities required by this act, and in case they cannot agree on the amount which each line shall pay, then said amount shall, upon application by either party, be determined and adjusted by the Railroad & Warehouse Commission, and either party shall have the right to appeal from the order of said commission fixing the amount so to be paid to the district court of the county where said transfer facilities are furnished. * * *

"(B.) All railway companies doing business in this state shall, upon the demand of any person or persons interested, or upon demand of the Railroad & Warehouse Commission, establish reasonable joint through rates for the transportation of freight between points on their respective lines within this state.

"Carload lots shall be transferred without unloading from the cars in which such shipments were first made, unless such unloading into other cars shall be done without charge therefor to the shipper or receiver of such car load lots, and such transfer shall be made without unreasonable delay, under such contract arrangements as such connecting companies may make, or under such rules as the Railroad & Warehouse Commission may prescribe as hereafter provided in this act.

"Less than car load lots shall be transferred into the connecting railway cars at cost, which shall be included in and made a part of the joint rates adopted by such railway companies, or established as provided by this act. When shipments of freight to be transported between different points within this state are required to be carried by two (2) or more railway companies operating connecting lines, such railway companies shall transport the same at reasonable through rates, and shall at all times give the same facilities and accommodations to local or state traffic as they give to interstate traffic over their lines of road."

Subdivision "C" authorizes the Railroad and Warehouse Commission of the State of Minnesota, in case said companies fail to establish reasonable joint rates for such through shipment of freight, or the rates and terms upon which cars of one company shall be transferred in such through shipments from the line of one company to the other, and returned, or to provide for the convenient and prompt transfer of such through freight from cars of the receiving company to those of a connecting line, to establish reasonable joint rates for the shipment of freight and cars over

said lines, and to prescribe reasonable rules under which such cars so transferred shall be returned.

Section 13 of chapter 10 of the laws of 1887, which is amended by said chapter 91 of the laws of 1895, provides for notice to any common carrier of any complaint made under the provisions of said act, and the right to answer and be heard upon any proceeding contemplated before the decision therein is also granted, and the parties aggrieved are by said act given the right to appeal to the courts of the state from the decision of such commission.

By section 15 (b) (General Statutes 1894, section 393 B) of said chapter 10, the decision of the Board of Railroad and Warehouse Commissioners is made presumptive evidence on all appeals that the same is just and reasonable.

POINTS AND AUTHORITIES ON BEHALF OF DEFENDANT IN ERROR.

It is urged by the learned counsel for plaintiff in error that the Supreme Court of Minnesota—being the highest court of the state—erred in deciding (as applied to the issues before it), that Chapter 91 of the General Laws of Minnesota for the year 1895, amendatory of Chapter 10 of the General Laws of 1887, does not violate:

1. Section 8 of article 1 of the constitution of the United States which confers upon congress the ex-

clusive power to regulate commerce between states.

2. The fourteenth amendment to the Federal Constitution (a), by abridging the privileges and immunities of the plaintiff in error as a citizen; (b), by denying to it the equal protection of the laws; (c), by depriving it of its property and the use thereof without due compensation or due process of law; (d), by denying to it the right of contracting with reference to its own business, and thus taking its property without its consent, and compelling it to enter into involuntary, unreasonable and unprofitable contracts with another railroad company at the instance of third parties, resulting in a loss of business and revenue on the part of the plaintiff in error.

3. Section 10 of article 1 of the constitution of the United States by impairing the obligation of the charter contract between the state and the plaintiff in error.

The real question presented to this court is the validity of *that part* of Chapter 91 of the General Laws of 1895, authorizing courts to require a mechanical connection to be made between two non-competing railroad companies at a point immediately adjacent to the mutual stations upon such lines and which looks to future arrangements in the matter of traffic interchange between such lines of railway.

I.

The evidence will be deemed sufficient to sustain the order of the Railroad and Warehouse Commission, and the judgment of the court of last resort in Minnesota.

The statute expressly provides that the findings of the commission are *prima facie* just and reasonable. This is the policy of the act as to all investigations made by the commission.

G. S. 1894, secs. 381 (c), 392, 393 (b);

Steenerson vs. Great Northern Ry. Co., 69 Minn. 351.

An examination of the evidence adduced by plaintiff in error not only fails to overcome the order of the commission and the final judgment of the Supreme Court, but, on the other hand, sufficiently discloses both the practicability and commercial necessity of the facilities asked for in the complaint.

In the first place it is to be observed that the intersection of the lines is at right angles and in close proximity to the village and station of Hanley Falls. From the depot over the Wisconsin, Minnesota & Pacific Railroad, the plaintiff in error, it is but forty rods, while from the depot over the Willmar & Sioux Falls Railroad, it is about sixty or seventy rods. (Record, page 59, folio 103.) It is not, then, the case of the intersection of two lines of railroad at a distance from stations where it might be necessary to provide depots or freight houses, but within a few rods of the depots of both companies, where undoubt-

edly both roads are supplied with ample sidetracking where trains can be sidetracked if necessary.

The evidence fully demonstrates that shippers of stock and consumers of fuel residing west of Hanley Falls on the line of road of the plaintiff in error would be greatly benefited, while the cost of putting in the "Y" or mechanical connection, exclusive of the land, would be only about $1,200, the benefits to those patrons would amount annually to several thousand dollars.

Purposes of the Act.

The essential features of the act of 1895 are:

1. To require all common carriers to provide at all points of connection, crossing or intersection at grade where it is practicable and necessary for the interest of traffic, ample facilities by track connections for transferring any cars used in the regular business of their respective lines of road from their lines or tracks to those of any other common carrier whose lines or track may connect with, cross or intersect their own.

2. To provide equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivery of passengers, property and cars to and from their several lines and those of other common carriers connecting therewith.

3. A common carrier is not required to furnish for another common carrier its track equipment or terminal facilities without reasonable compensation.

4. Each company owning the connecting lines is required to pays its proportionate share for the building and maintenance of tracks and switches as may be necessary to furnish the transfer facilities required by the act.

5. If the companies cannot agree as to the amount of such expenses which each is to pay or bear, the matter shall be adjusted by the Railroad and Warehouse Commission, with right of appeal to the district court.

With a view to the business to be transacted by aid of such facilities, the following provisions have been enacted in the same law, to the effect that:

1. Railway companies shall upon demand of any person or persons interested or of the Railroad and Warehouse Commission establish reasonable and joint through rates between points in this state.

2. Carload lots shall be transferred without unloading, unless done without expense to the shipper or receiver and shall be made without unreasonable delay. Less than carload lots shall be transferred into connecting railway cars at cost, which shall be included in and made part of the joint rates adopted by said railway companies. In each instance the charge is included in, and, as a whole, constitutes a reasonable rate.

3. If the common carriers fail for any reason to establish through joint rates or fail to establish between themselves the rates and terms upon which the cars of one company shall be transferred from

line to line, the Railroad and Warehouse Commission shall do it for them.

4. A company is not required to send its cars on another road when its own line of railroad runs to and reaches the point of destination of the shipment.

It will be observed that the judgment entered in this case barely directs the plaintiff in error and the Willmar & Sioux Falls Railway Company, originally impleaded with it, to provide a mechanical connection or "Y" at the point of intersection of said two lines of railway at the station Hanley Falls, and does not directly involve the details of establishing traffic connections, the amount of a joint rate, or the construction of the validity of that part of the Minnesota statute involving the amount of the charge for unloading cars at this point, or whether the amount of same must be deemed as injected into and forming a part of any joint rate to be mutually agreed upon or established in the future.

ARGUMENT.

I.

The assignments of error of the plaintiff in error will be considered in the order first above indicated.

Did the Supreme Court of Minnesota err in deciding, (as applied to the facts before it for consideration), that Chapter 91 of the General Laws of 1895 did not violate Section 8 of Article 1 of the Constitution of the United States, which confers upon Congress the exclusive power to regulate commerce between States and foreign Nations.

The learned Supreme Court of Minnesota in its decision herein, (Record, page 67, folios 116-117), uses the following language:

"Appellant W., M. & Pac. Ry. Co. contends that as the shipping of stock to Sioux City and Omaha is interstate commerce, the state tribunals have no jurisdiction over it and must not take into consideration the question of the transferring of cars of such stock when determining the necessity of a connection at this crossing. Conceding, without deciding, that the state tribunals would have no jurisdiction to require the making of this connection for the sole purpose of transferring cars engaged solely in the carrying of interstate commerce, it does not follow that these tribunals may not take into consideration the benefit of such commerce also when determining the necessity of this connection. The whole traffic to be benefited by the making of the connection may be amply sufficient to justify requiring the same to be made; yet the part of such traffic commencing and ending in the state may not be sufficient when taken alone, and the part which consists of interstate commerce may not be sufficient when taken alone. If appellant's position is correct, neither the state tribunals nor the Federal tribunals would have jurisdiction in such a case. Clearly such is not the law. In such a case jurisdiction is concurrent. If there is some necessity resulting from the benefit which will accrue to exclusively state commerce by reason of the putting in of the connection, this gives the state tribunals jurisdiction (Munn vs. Illinois, 94 U. S. 126), and in disposing of the case they may take into consideration the whole necessity resulting from the whole benefit which will accrue to all classes of commerce.

"But even if this position was not correct, there is, in our opinion, ample evidence in this case of necessity resulting from the benefit which will accrue to exclusively state commerce, when considered alone, to justify the ordering of the connection in question. We will go further."

It is urged: First—That any reasonable and necessary exercise of the police power by the legislature

of the state does not offend that clause of the constitution of the United States vesting in congress the sole power to regulate commerce between states.

Second—That public carriers assume public burdens. Their business is therefore affected with a public interest, and they are subject to reasonable exactions in the line of such duties imposed by the state creating them.

Minnesota vs. Gladson, 166 U. S. 430.

Hennington vs. Georgia, 163 U. S. 299.

Munn vs. Illinois, 94 U. S. 130.

Stones vs. Farmers Loan & Trust Co., 116 U. S. 334.

Georgia Banking Co. vs. Smith, 128 U. S. 179.

Osborn vs. Florida, 164 U. S. 650.

The attention of the court is called to a few excerpts from the opinions of the court in the above cases.

In *Gladson vs. Minnesota*, the court had under consideration the Minnesota statute requiring all passenger trains to stop at county seats in the respective counties. The train in question connected with the train of the same company running into another state and carried interstate passengers and United States mail. The court, at page 430, say:

"The principles of law which govern this case are familiar and have been often affirmed by this court. A railroad corporation created by a state is for all purposes of local government a domestic corporation, and its railroad within the state is a matter of domestic concern. Even when its road connects, as most railroads do, with railroads in other states, the state

which created the corporation may make all needful regulations of a police character for the government of the company while operating its road in that jurisdiction. It may prescribe the location and the plan of construction of the road, the rate of speed at which the trains shall run, and the places at which they shall stop, and *may make any other reasonable regulation for their management, in order to secure the objects of the incorporation, and the safety, good order, convenience and comfort of the passengers and of the public.* All such regulations are strictly within the police power of the state. They are not in themselves regulations of interstate commerce; and it is only when they operate as such in the circumstances of their application, and conflict with the express or presumed will of congress exerted upon the same subject, that they can be required to give way to the paramount authority of the Constitution of the United States. Stone vs. Farmers' Loan and Trust Co., 116 U. S. 307, 333, 334; Smith vs. Alabama, 124 U. S. 465, 481, 482; Hennington vs. Georgia, 163 U. S. 299, 308, 317; New York, New Haven & Hartford Railroad vs. New York, 163 U. S. 628, 632."

In *Munn vs. Illinois*, at pages 125 and 130, the Court say:

"When, therefore, one devotes his property to a use in which the public has an interest he in effect grants to the public an interest in that use and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use, he must submit to the control. * * * * *

"Common carriers exercise a sort of public office and have duties to perform in which the public is interested. New Jersey Nav. Co. vs. Mer. Bank, 6 How. 383. Their business is, therefore, 'affected with a public interest,' within the meaning of the doctrine which Lord Hale has so forcibly stated."

In *Hennington vs. Georgia*, the Court had under consideration a statute of Georgia, being section 4578, of the act of 1882, which prohibited, under penalty,

the running of any freight train upon any railroad in the state on Sunday. The superintendent of transportation of a certain railway was indicted and convicted of running a freight train over the said line of railway from Chattanooga, Tennessee, through Georgia into the State of Alabama, which train was loaded in Tennessee with freight consigned to points beyond the limits of Georgia. This court in affirming the decision of the Supreme Court of Georgia at pages 307-8 say:

"Assuming then, that both upon principle and authority the statute of Georgia is, in every substantial sense, a police regulation established under the general authority possessed by the legislature to provide, by laws, for the well-being of the people, we proceed to consider whether it is in conflict with the Constitution of the United States.

"The defendant contends that the running on the Sabbath day of railroad cars, laden with interstate freight, is committed exclusively to the control and supervision of the National Government; and that, although Congress has not taken any affirmative action upon the subject, state legislation interrupting, even for a limited time only, interstate commerce, whatever may be its object, and however essential such legislation may be for the comfort, peace and safety of the people of the state, is a regulation of interstate commerce forbidden by the Constitution of the United States. Is this view of the Constitution and of the relations between the states and the general government sustained by the former decisions of this court? Is the admitted general power of a state to provide by legislation for the health, the morals and the general welfare of its people so fettered that it may not enact any law whatever that relates to or affects in any degree the conduct of commerce among the states? If the people of a state deem it necessary to their peace, comfort and happiness, to say nothing of the public health and the public morals, that one day in each week be set apart by law as a day when business of all kinds carried on

within the limits of that state shall cease, whereby all persons of every race and condition in life may have an opportunity to enjoy absolute rest and quiet, is that result, so far as interstate freight traffic is concerned, attainable only through an affirmative act of congress giving its assent to such legislation?

"The argument in behalf of the defendants rests upon the erroneous assumption that the statute of Georgia is such a regulation of interstate commerce as is forbidden by the Constitution, without reference to affirmative action by congress, and not merely a statute enacted by the state under its police power, and which, although in some degree affecting interstate commerce, does not go beyond the necessities of the case, and, therefore, is valid, at least until congress interferes."

In *Georgia Banking Co. vs. Smith*, the Court had under consideration some of the reciprocal duties assumed by transportation companies as an incident to the special privileges conferred. At page 179 the Court say:

"So long as the use continues, the power of regulation remains, and the regulation may extend not merely to provisions for the security of passengers and freight against accidents, and for the convenience of the public, but also to prevent extortion by unreasonable charges, and favoritism by unjust discriminations. This is not a new doctrine but old doctrine, always asserted whenever property or business is, by reason of special privileges received from the government, the better to secure the purposes to which the property is dedicated or devoted, affected with a public use. There have been differences of opinion among the judges of this court in some cases as to circumstances or conditions under which some kinds of property or business may be properly held to be thus affected, as in Munn vs. Illinois, 94 U. S. 113, 126, 139, 146; but none as to the doctrine that when such use exists the business becomes subject to legislative control in all respects necessary to protect the public against danger, injustice and oppression."

In *Stone vs. Farmers Loan & Trust Co.*, at page 334, the Court say:

"So it may make all needful regulations of a police character for the government of the company while operating its road in that jurisdiction. In this way it may certainly require the company to fence so much of its road as lies within the state; to stop its trains at railroad crossings; to slacken speed while running in a crowded thoroughfare; to post its tariffs and time-tables at proper places, and other things of a kindred character affecting the comfort, the convenience, or the safety of those who are entitled to look to the state for protection against the wrongful or negligent conduct of others."

In *Kidd vs. Pearson*, 128 U. S., at page 23, the Court say:

"As has been often said, 'legislation (by a state) may in a great variety of ways affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution,' unless, under the guise of police regulations, it imposes a direct burden upon interstate commerce, or interferes directly with its freedom. *Hall vs. De Cuir*, 95 U. S. 483."

In *Osborn vs. Florida*, the Court held (quoting from the syllabus) that:

"A license tax imposed upon express companies doing business in Florida as construed by the Supreme Court of that state, belongs solely to the business of the company within the state and does not apply to or affect the business which is interstate in its character, and if so construed, the statute does not, in any manner, violate the Federal Constitution. The construction of a state statute by the highest court of the state is not open to review."

The Supreme Court of Minnesota determining the case at bar in discussing the general question as to the necessity of providing a mechanical connection between the lines of railway of the plaintiff in error

and the line of the Willmar & Sioux Falls Railway Company, originally impleaded with it, and also the question of the right to enforce certain police regulations for the good of the general public, remotely affecting interstate commerce, use the following language:

"There is, in our opinion, ample evidence in this case of necessity resulting from the benefit which will accrue to *exclusively state commerce*, when considered alone, to justify the ordering of the connection in question." (Record page 67, folio 117.)

We submit that, independent of the contention that the statute in question is but a reasonable exercise of the police power of the state, which under the authorities cited, cannot be deemed to be a regulation of commerce between states within the meaning of the commerce clause of the Constitution, that the case at bar is brought directly within the principle decided by this court in *Osborn vs. Florida, supra,* and that the statute of Minnesota as construed by the highest court in the state, applied to the question before the court, must be deemed as not applying to or affecting business which is interstate in its character. The judgment of the lower court, which is assailed, barely directed the construction of a mechanical connection between these two lines of railway, and the courts of Minnesota held that the same was necessary as applied solely to traffic originating and ending in the state. We submit the determination of this question does not involve this clause of the Federal Constitution.

It would be greatly at variance with the modern doctrine upon the subject of public regulation of common carriers to say that the legislature is not authorized to require facilities in all cases contemplated by the statute under consideration.

We submit it is only upon the theory that the railway company is necessary to the general welfare of the public as an agency of travel and commerce that it is chartered, given the power of eminent domain and specially protected. The very nature of such business connects it with public interests and the relations of the public to railway companies of necessity must be reciprocal.

The view sometimes expressed that the police powers are restricted to questions of public health, public morals and public peace is too restricted, and does not accord with the weight of authority. It extends to all other subjects in the use, control, destruction and preservation of which the general welfare is involved.

Lawton vs. Steele 152 U. S. 133;
Thorpe vs. Rutland & B. R. R. Co., 27 Vt. 149;
Pac. Ex. Co. vs. Seibert, 142 U. S. 339;
Slaughter House Cases, 16 Wall. 36;
Beere vs. Massachusetts, 97 U. S. 25;
Boyd vs. Alabama, 94 U. S. 645;
Munn vs. Illinois, 94 U. S. 113;
Mo. Pac. Ry. Co. vs. Mackey, 127 U. S. 205;
Budd vs. People, 143 U. S. 517;
M. & St. L. Ry. Co. vs. Herrick, 127 U. S. 210;

State vs. Corbett, 57 Minn. 349;

Hawthorne vs. People, 109 Ill. 302;

State vs. Cargill Elevator Co. (Minn.), 79 N. W. R. 362;

Railroad Co. vs. Husen, 95 U. S. 465.

In *Lawton vs. Steele* the subject under consideration was a statute of New York regulating the taking of fish in certain waters of Lake Ontario, and providing for the destruction of certain fish nets. After enumerating many instances in which the police powers have been sustained relating to the public health, morals and peace, the court, speaking by Mr. Justice Brown, say:

"Beyond this, however, the state may interfere whenever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests."

In this case the destruction of fish nets by a public officer pursuant to the authority conferred by the New York statutes was held, affirming the Court of Appeals of New York, to be the lawful exercise of the police power of the state, and that such destruction did not deprive the citizen of his property without due process of law and was not in violation of the provisions of the Constitution of the United States.

In *Thorpe vs. Rutland* it is said:

"Persons and property are subjected to all kinds of restrictions and burdens in order to secure the general comfort, health and prosperity of the state."

Cited with approval in *Slaughter House Cases, supra.*

In *Railroad Companies vs. Husen*, at page 474, the Court, referring to the police power, say:

"And as its range sometimes comes very near to the field committed by the Constitution to congress it is the duty of the courts to guard vigilantly against any needless intrusion."

II.

Does the statute in question abridge the privileges or immunities or deprive the plaintiff in error of its property without due process of law, or deny to it the equal protection of the laws?

In *Duncan vs. Missouri*, 152 U. S. 382, this Court, speaking by Mr. Justice Field, say:

"The privileges and immunities of the citizens of the United States protected by the 14th Amendment are privileges and immunities arising out of the nature and essential character of the Federal government, and granted or secured by the Constitution; and due process of law and the equal protection of the laws are secured if and the laws operate on all alike and do not subject an individual to an arbitrary exercise if the powers of government."

It is not insisted that the plaintiff in error has been deprived of privileges or immunities arising out of the nature and essential character of the Federal government granted or secured by the Constitution. Neither is it suggested that the act of the legislature of Minnesota under consideration does not operate upon all alike. We submit, therefore, the only serious contention presented by the plaintiff in error which has not been foreclosed by the adjudications of this court is the assertion that the Minnesota

statute deprives it of its property without due process of law.

The narrow question presented, stated in another form, amounts to this: Does the decision of the court of last resort in Minnesota, made pursuant to the statute in question which requires the plaintiff in error to construct a mechanical connection between its line of railway and a non-competing line, with the ultimate view of requiring the interchange of cars or traffic between said two lines of railway, amount to a deprivation of the property of said plaintiff in error without due process of law, within the meaning of Section 1 of the 14th Amendment to the Federal Constitution?

That the 14th Amendment was not designed to and does not impair the police power of the State.

Barbier vs. Connolly, 113 U. S. 27.

In *Barbier vs. Connolly*, Mr. Justice Field, at page 31, while discussing many questions arising under the Amendment, speaking for the Court, used the following significant language:

"But neither the Amendment—broad and comprehensive as it is—nor any other Amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits—for supply-

ing water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon any one but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

It is submitted the design of the statute under consideration involves directly the public welfare of the people of Minnesota and does not inflict a serious burden upon the plaintiff in error, but rather a duty consistent with the ordinary methods of conducting its business, and concerning a subject with which the plaintiff in error is charged with a public interest.

That the legislature of the State has the power to compel a common carrier to do business in the ordinary and usual way, and therefore may compel such interchange of cars or transfer facilities as are incidental to the business for which the company was chartered.

Burlington, Etc., Ry. Co. vs. Day, 48 N. W. R. (Ia.) 98.

See, also,

Peoria, Etc., Ry. Co. vs. C., R. I. & P. Ry. Co., 109 Ill. 135;

Atchison Etc., Ry. Co. vs. Denver, Etc., Ry. Co., 110 U. S. 667;

Michigan Central Ry. Co. vs. Smithson, 45 Mich. 212;

State vs. Ry. Co., 83 Mo. 144;

Willmar & S. F. Ry. Co. vs. Jacobson. See Record, 69.

The learned counsel for plaintiff in error urges that the Supreme Court of Iowa in the same case upon a second appeal, disapproved this holding.

Burlington vs. Day, 56 N. W. R. 271.

A careful examination will show that the former ruling upon this particular point was not directly overthrown. No direct reference was made to the conclusion citicised, other than the statement that "some of us are content with the result reached in the former opinion, others, the writer included, do not approve of the reasoning and conclusions found in the opinion." The personnel of the court had changed during the period intervening, and the conclusion, at least is of force as indicating the judgment of the Supreme Court of Iowa as once constituted, which decision has not, as yet, been directly overthrown.

The authority also cited by the learned counsel on page 15 of his brief, to the effect that a like statute to the one under consideration was held by the Supreme Court of Nebraska to be in violation of the Federal Constitution, is clearly not in point.

State ex rel. vs. S. C., O. & W. R. Co., 65 N. W. R. 766.

In that case it appeared that the legislature of Nebraska, by Chapter 11 of the Laws of 1893, required railroad companies as an absolute finality, and without the right of judicial investigation by due process of law, to carry freight over longer lines for the same rates as required by any railroad company for hauling the same freight between the same points by a shorter line, no matter how great the disparity in the length of such hauls may be.

The Court held, 1st: That this provision was in violation of the 14th Amendment to the Federal Constitution. 2nd. In the matter of the application before the board for an order to construct transfer switches, the Court at page 767, say:

"It is not possible to determine whether or not the connection by transfer switch could have been compelled under the provisions of Section 113, Chapter 16, Compiled Statutes (which was the act upon which the application was based), for there are contained in the application no averments showing the existence of prerequisites, indispensable under this section."

And the Court proceeded to decide, at page 771, that it does not follow that independently of legislative establishment of rates or requirements, *quasi* public corporations, "may by the Courts be compelled to enter into a particular agreement or assume particular relations, however just and equitable, toward each other. That subject has recently engaged the attention of the Supreme Court of the United States, by which the power to prescribe terms for the interchange of business by connecting carriers is declared to be rather legislative than judicial in character,

notwithstanding the provisions of the interstate commerce act."

Citing *Atchison, T. & S. F. R. Co. vs. Denver & N. O. R. Co.* 110 U. S. 667, and other Cases.

It will be noticed the philosophy of the Nebraska case supports the contention of defendant in error here.

In *Peoria & P. U. Ry. Co. vs C., R. I. & P. Ry. Co., supra*, the Court, at pages 139, says:

"The question presented is one of first impression in this court. Nor have counsel cited any case where the exact question involved has been considered by any court of last resort. It leaves this court free to determine the law on principle as shall be thought to best subserve public interests as well as the private interests of corporations concerned. No proof is needed to show the extent and the importance of the interests involved in the decision. It is a matter of so much public concern that judicial notice may be taken of the fact that cars belonging to different companies are interchangeably used on all the principal railroads in the United States, and that no company could do any considerable freighting business that did not conform to this general usage. Without such usage it would be difficult, if, indeed, it would be possible, to transact the commercial business of the country. Freights for shipment across the continent could not well be stopped at the terminus of each carrier's line, and reshipped in cars of the connecting carrier. That would occasion more delay than the necessities of commerce would tolerate. The extent of the usage in regard to the exchange and transportation of cars among so many different railroads would seem to require such exacting rules and regulations as would insure the strictest accountability on the part of companies that may transfer or haul cars over their respective roads.

"The statute of this state that forbids 'extortion and unjust discrimination' by railroad companies, would seem by its provisions to recognize that railroad corporations may be common carriers of 'cars,' as well

as of freights, for such a corporation is not only forbidden to make any unjust discrimination in its charges for the transportation of passengers or freights, of any description, but for the use and 'transportation of any railroad car' upon its road. And why may there not be such a thing as a common carrier of cars, either with or without its load of freight? As to the freight the car contains, it will be conceded such carrying roads are common carriers, and are subject to the strict liability of such carriers, and, as has been seen, by a constitutional provision all the rolling stock and other movable property belonging to a railroad corporation in this State shall be considered personal property. What reason exists for discriminating against this class of 'personal property' and for holding that railway companies carrying it shall not be regarded as common carriers? The mode of moving it, whether on wheels or in carriages, ought not to be the foundation for any distinction. In either case the property is in the exclusive care and control of the carrier, and there is as much reason arising from public considerations why such a carrier should be held to the strict liability of an insurer for the safety of the property, in the one case as in the other. The facts in the present case show a strong necessity for imposing the liability attaching to a common carrier."

In *Atchison, T. & S. F. Ry. Co. vs. Denver & N. O., Ry. Co., supra*, at page 684, the court, speaking by Mr. Chief Justice Waite, say:

"Our attention has been called to several cases in the English courts where the question of reasonable or unreasonable preference by railway companies has been considered, but they all arose under the 'Railway and Canal Traffic Act, 1854,' 18 & 18 Vict., c. 31, and furnish but little aid in the determination of the present case. They are instructive and of high authority as to what would be undue or unreasonable preferences among competing customers, but none of them relate to the rights of connected railroads where there is no provision in law for their operation as continuous lines for business. And here it is proper to remark that in the very act under which these cases arose it is provided that 'every railway company

* * * working railways * * * which form part of a continuous line of railway * * * communication * * * shall afford all due and reasonable facilities for receiving and forwarding by one of such railways * * * all the traffic arriving by the other, without any unreasonable delay, and without any * * * preference or advantage, or prejudice or disadvantage, * * * and so that no obstruction may be offered to the public desirous of using such railways * * * as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways * * * of the several companies, be at all times afforded to the public in that behalf.' If complaint was made of a violation of this provision, application could be made to the courts for relief. Were there such a statute in Colorado, this case would come before us in a different aspect. *As it is, we know of no power in the judiciary to do what the Parliament of Great Britain has done, and what the proper legislative authority ought to do, for the relief of the parties to this controversy.*

All the American cases to which our attention has been called by counsel relate either to what amounts to undue discrimination between the customers of a railroad company, or to the power of a court of chancery to interfere, if there is such a discrimination. None of them hold that, in the absence of statutory direction, or a specific contract, a company having the power to locate its own stopping places can be required by a court of equity to stop at another railroad junction and interchange business, or that it must under all circumstances give one connecting road the same facilities and the same rates that it does to another with which it has entered into special contract relations for a continuous through line and arranged facilities accordingly. The cases are all instructive in their analogies, but their facts are different from those we have now to consider. * * *

"The real question in the case, as it now comes before us, is whether the relief required is legislative in its character or judicial. We think it is legislative, and that upon the existing facts a court of chancery can afford no remedy."

In *Michigan Central Ry. Co. vs. Smithson, supra*, the court, discussing the general subject, at page 221, by Mr. Justice Cooley, say:

"The primary fact that must rule this controversy is that the Michigan Central Railroad Company is compelled to receive and transport over its road all the varieties of freight cars which are offered to it for the purpose, and which are upon wheels adapted to its gauge. It is compelled to do so—*First*, because the necessities of commerce demand it. It cannot and would not be tolerated that cars loaded at New York for San Francisco, or at Boston for Chicago, should have their freight transferred from one car to another whenever they passed upon another road. Time would be lost, expense increased, injuries to freight made more numerous, and no corresponding advantage accrue to any one. It is compelled to do so, *second*, by its own interest. To attempt to stop every car offered to it at its own *termini*, that the freight might be transferred to its own vehicles, would be to drive away from its line a large portion of its traffic, and compel it to rely upon a local business, for which it must increase its charges to make up, if possible, for what it would lose. But *third*, the statute itself requires it. It is provided by General Laws, 1873, p. 99, that 'every corporation owning a road in use shall, at reasonable times and for a reasonable compensation, draw over the same merchandise and cars of any other corporation.' *The necessities of commerce require this with such imperative force that there could scarcely be a more flagrant breach of corporate duty than would be a refusal to obey this law; and the interference of the State to punish, could hardly fail to be speedy and effectual.*"

In *State, Etc., vs. The W., St. L. & P. Ry. Co., supra*, the Supreme Court of Missouri, in holding that the requirement of the legislature for the erection of such passenger waiting rooms at railroad crossings is a proper exercise of the police power of the State, by Mr. Justice Norton, at page 150, say:

"While the defendant company is a private corporation and the franchise and property acquired by it private property, the use to which it is applied is nevertheless a public use. The general assembly has delegated to railway companies the power to exercise the right of eminent domain, and to take private property upon which to construct their roads upon the sole ground that the property so taken is to be devoted to a public use, and that they were created and brought into being for public purposes; and it is upon this ground that the seizure of property for their use and the validity of county and municipal subscriptions to such enterprises have been maintained by the courts. Such being the designs of their creation, the public having an interest in the use have the right, through the legislature, to subject them to such reasonable regulations as will effectuate and promote the object of their creation. The requirement to build suitable depots or passenger houses at the crossing of railroads for the accommodation of the public desiring to avail themselves of the use to which the property of the corporation is devoted, and in which the public has an interest is not, in our opinion, an unreasonable regulation, and may be classed as coming within a proper exercise of the police power of the state, and directly in aid of the very object for which such corporations were created. Such a regulation neither disturbs any chartered rights nor impairs the obligation of any contract relation existing between the state and the corporation, but on the contrary was designed to facilitate public travel on roads respectively crossing each other."

The learned Supreme Court of Minnesota, adopting the philosophy of the above cases, held, that Chapter 91 of the Laws of Minnesota for 1895 was an exercise of the police power of the State, designed for the public welfare, and involving a public interest which the organization of the plaintiff railroad was designed to promote.

A somewhat similar question arose in the *Express Cases*, 117 U. S. 1.

Certain Express Companies sought to compel railroad companies to give them the express facilities which they had previously enjoyed under contracts which had been terminated by notice. The Express Companies relied upon their common law right to be accommodated as a part of the public by common carriers. The majority opinion of the court was against this. At page 29 the court say:

"The regulation of matters of this kind is legislative in its character, not judicial. To what extent it must come, if it comes at all, from Congress, and to what extent it may come from the State, are questions we do not now undertake to decide; but that it must come, when it does come, from some source of legislative power, we do not doubt. The legislature may impose a duty, and when imposed it will, if necessary, be enforced by the courts, but unless a duty has been created either by usage or by contract or by statute, the courts cannot be called on to give it effect."

Mr. Justice Field, being joined by Mr. Justice Miller in dissenting, said:

"But I am clear that railroad companies are bound as common carriers to accommodate the public in the transportation of goods according to its necessities, an through the instrumentalities or in the mode best adapted to promote its convenience. Among these instrumentalities, express companies, by the mode in which their business is conducted, are the most important and useful."

In this connection attention is called to the fact that the courts of Minnesota have held that the necessity exists and the public welfare demands that the mechanical connection ordered to be constructed by the plaintiff in error and its co-defendant in the original proceedings, shall be made.

The position above outlined of the plaintiff in error finds further support in *Mayor & Alderman vs. N. W. Ry. Co.*, 109 Mass. 112, wherein the Court decreed, pursuant to legislative authority, the extension of the line of tracks of a certain railroad having a terminus in the City of Worcester. The Court say:

"At any rate, the legislature was the exclusive judge as to that matter, and an amendment of the several charters, so as to secure such an object, was a reasonable exercise of their reserved right. It is no valid objection to such amendments, that they require corporations to extend their tracks, and to exercise the right of eminent domain for this purpose and to incur additional expense. The power to extend their tracks is often granted at their own request; and is granted with no less propriety when the interests of the public require it. The power to alter a charter includes the right to take away some of the powers granted by it, or to add new powers without which improvements of the greatest importance would be *ultra vires*. Their compensation for the outlay is in the tolls they receive from travelers or others.

"It is contended that if this act is sustained it will imply a power in the legislature to require a railroad corporation to extend its track to the state line in any direction. This is putting an extreme case; but we have no occasion to consider such a case, for all the roads named in the act and required to extend their tracks have a terminus in the city of Worcester, and are to be extended only through a portion of the city to the station of the Boston & Albany Railroad. The power to require a track to be lengthened certainly exists to this extent if it exists at all."

I may be pardoned for referring to the oft quoted language of the Court in Munn vs. Illinois, that

"Property becomes clothed with a public interest when used in a manner to make it of public consequence and affect the community at large; when, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants the pub-

lic interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to the control."

If a railroad company can be required to construct a depot for the accommodation of passengers, a platform for the receipt of freight at stations or extend its tracks when the necessities of the public require it, why can it not be compelled by statute to provide a "Y" or mechanical connection for the receipt of freight consigned over the tracks of a company intersecting its line?

The learned counsel calls particular attention to that clause in the statute requiring railroads to unload freight in car lots free of cost, in cases of refusal of such companies to provide transportation facilities for the interchange of cars. It is submitted that the true construction of the statute as a whole contemplates the establishment of a reasonable joint and through rate, which of necessity implies a reasonable charge for all services rendered. Defendant in error in his evidence given in the original case (Record page 45, folio 76) concedes this construction, and the state does not and will never contend for any other interpretation of the statute. That question was not directly before the Court at any stage in this proceeding for the purpose of determination. (See Opinion, Record pages 69-70, folio 121.)

Counsel for plaintiff in error maintains on page 14 of his brief that neither at common law nor under the interstate commerce act can a railroad company be compelled to haul the cars of another company over its line where it has cars of its own which it desires to use for the transportation of traffic, and cites,

Oregon Short Line Co. vs. N. P. R. R. Co., 51 Fed. Rep. 470;

Little Rock & M. R. Co. vs. St. Louis & I. M. S. Co., 41 Fed. 562;

Railway Co. vs. Osborn, 52 Fed. 914;

Railway Company vs. Railway Company, 59 Fed. 400;

Kentucky & I. Bridge Co. vs. Louisville, 375 Fed. 625.

In each of the above cases the decision is based upon the ground that the legislative authority imposing this duty or obligation is wanting.

In *Kentucky & I. Bridge Co. vs. Louisville*, referring to the interstate commerce act, the learned judge says:

"Neither this act nor any other provision of the law requires of the common carrier of interstate commerce the duty of either forming new connections or establishing new stations for the reception and delivery of freight. The act deals with common carriers as it finds them, and leaves them full discretion as to what connections they may form."

In *Railway Co. vs. Osborn* the learned trial judge says:

"No power existed at common law and none is given by the act to the court or commission, to compel connecting companies to contract with each other; to abandon separate control of their separate rights, or to unite in a joint tariff."

Citing with approval the language of the Court in *Express Cases*, 117 U. S. 1; *Kentucky & I. B. Co. vs. Louisville, supra; Little Rock & M. R. Co. vs. St. Louis & I. M. S. Co.*, supra.

Railway Co. vs. Railway Company, 59 Fed. 400, is to the same effect.

It, therefore, follows that each authority cited by the learned counsel tells for the defendant in error.

III.

Does the act under consideration impair the obligation of the charter contract between the State of Minnesota and the plaintiff in error?

The plaintiff in error was organized as a corporation by an act of the Territory of Minnesota at the Extra Session of 1857, Chapter 2, Section 3, which includes the grant of power set forth in full at page 11 of the brief filed in its behalf. The utmost that can be said of this grant is that it organized the plaintiff in error as a corporation and authorized it to construct a line of railway with the usual powers of railway companies. Exemption from future general legislation was neither expressly given in said charter or granted by implication in the most remote degree.

The question seems to be settled in this court that exemptions from future general legislation, either by constitutional provision or by an act of the legislature, does not exist, unless it is expressly given in private

charters, or unless it follows by an implication equally as clear as if expressed in the plainest phraseology.

Pennsylvania Ry. Co. vs. Miller, 132 U. S. 75, and cases cited;

Pierce on Railroads, page 457;

C. & C. Ry. Co. vs. Minnesota, 134 U. S. 455.

It is urged that the doctrine of *Planters' Bank vs. Sharp*, 6 How. 327, invoked by counsel, has no application whatever.

In *State ex rel. City of St. Paul vs. St. Paul City Ry. Co.*, 81 N. W. Rep. 200, the Court say:

"While the municipality cannot impair the obligation of its contract under the guise of exercising its police power, yet it cannot surrender or barter away its police power under the guise of making a contract."

That the same rule applies to a State see

Douglas vs. Kentucky, 168 U. S. 488.

In the former case the Minnesota court had before it, and affirmed, the right of the City of St. Paul to require the City Railway Company to lay its tracks in other streets than those named in its original charter contract; while in the latter the celebrated Louisiana Lottery charter was under consideration.

IV.

Attention is particularly called to the fact that the lessee of the plaintiff in error has traffic connections with the Great Northern Railway Company, the lessee of the Willmar & Sioux Falls Railway Company, one of the original defendants in this proceeding, at a point not affected by the traffic tributary to Han-

ley Falls, to-wit, at Minneapolis (Record page 56, folio 97).

This fact bears sharply upon the force of the contention of the learned counsel for plaintiff in error that the statute under consideration may drive them into traffic relations at Hanley Falls dangerous to the company. If traffic relations are maintained with the Great Northern at Minneapolis, it can fairly be inferred the same companies may, with safety, enter into like relations at other points. It is contended that the courts will take judicial notice of the ordinary and necessary methods employed by railroads in handling the commerce of the country. Also that the legislatures of the various states have power to provide (as applied to its local interests) for the adoption and execution of such methods where the public necessity or welfare requires it.

In conclusion defendant in error submits that the act of the legislature of Minnesota places no burden upon, but is rather in aid of, commerce between States; that it does not deprive the plaintiff in error of any rights secured by the Fourteenth Amendment to the Federal Constitution; and that by said act the State of Minnesota has not offended the contract organizing said corporation made while a Territory.

W. B. DOUGLAS,
Attorney General,
Attorney for Defendant in Error.

Supreme Court of the United States.

No. 28.—October Term, 1900.

The Wisconsin, Minnesota and Pacific Railroad Company, Plaintiff in Error,
vs.
Jacob F. Jacobson.

In error to the Supreme Court of the State of Minnesota.

[December 10, 1900.]

This case comes here by writ of error to the Supreme Court of Minnesota to review the judgment of that court, affirming the judgment of the District Court, directing the plaintiff in error and the Willmar and Sioux Falls Railway Company to make track connections with each other at Hanley Falls, in the State of Minnesota, where their respective tracks intersect.

The proceeding was duly commenced by the defendant in error, pursuant to the provisions of chapter 91 of the General Laws of Minnesota of 1895. The third section, a part of which is material to the question reviewed, is set forth in the margin.*

* Sec. 3. (*a*) That all common carriers subject to the provisions of this act shall provide at all points of connection, crossing or intersection at grade, where it is practicable and necessary for the interests of traffic, ample facilities by track connections for transferring any cars used in the regular business of their respective lines of road from their lines or tracks to those of any other common carrier whose lines or tracks may connect with, cross or intersect their own, and shall provide equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivery of passengers, property and cars to and from their several lines and those of other common carriers connecting therewith, and shall not discriminate in their rates or charges between such connecting lines or on freight coming over such lines; but this shall not be construed as requiring any common carrier to furnish for another common carrier its tracks, equipment or terminal facilities without reasonable compensation; that each of said connecting lines shall pay its proportionate share for the building and maintenance of such tracks and switches as may be necessary to furnish the transfer facilities required by this act, and in case they cannot agree on the amount which each line shall pay, then said amount shall, upon application by either party, be determined and adjusted by the Railroad and Warehouse Commission, and either party shall have the right to appeal from the order of said commission fixing the amount so to be paid, to the district court of the county where said transfer facilities are furnished, by serving a notice in writing on the adverse party within ten (10) days after the making and filing of such order by said commission, and upon the service of such notice there shall be pending in said district court a civil action for the adjustment and determination of the amount to be paid by each

In accordance with the statute, the defendant in error filed his petition before the railroad commission of the State, setting forth the grounds upon which he based the request for an order directing the two companies to make the track connection therein referred to.

Both companies defended. The grounds of defense were substantially alike. The plaintiff in error alleged in its answer, among other matters, that to construct a connecting track, as asked for in the petition and as provided for in the statute mentioned, would require the company to go outside of its right of way and to condemn land for that purpose.

In addition, it was urged that to compel the companies to make such connection would violate the commerce clause and also the Fourteenth Amendment of the Federal Constitution in particulars specially set forth, and it was claimed that the statute was therefore void.

Evidence was taken before the commission, which finally ordered the connection to be made. The two companies appealed to the District Court, which heard the case anew, and then made substantially the same order as that made by the commission.

The judgment of the District Court declared as follows:

"That it is the duty of the defendants, the Wisconsin, Minnesota and Pacific Railroad Company and the Willmar and Sioux Falls Railway Company, and they should be and are required to forthwith provide at the

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carrier for the expense of the building and maintenance of said transfer facilities. Pleadings shall be made and filed in said action in conformity to those required by law and rules of practice in said court, and said cause shall be tried in the manner provided for the trial of civil actions in the district courts of this State.

(*b*) All railway companies doing business in this State shall, upon the demand of any person or persons interested, or upon demand of the Railroad and Warehouse Commission, establish reasonable joint through rates for the transportation of freight between points on their respective lines within this State.

Carload lots shall be transferred without unloading from the cars in which such shipments were first made, unless such unloading into other cars shall be done without charge therefor to the shipper or receiver of such carload lots, and such transfer shall be made without unreasonable delay, under such contract arrangements as such connecting companies may make, or under such rules as the Railroad and Warehouse Commission may prescribe, as hereafter provided in this act.

Less than carload lots shall be transferred into the connecting railway cars at cost, which shall be included in and made a part of the joint rates adopted by such railway companies, or established as provided by this act. When shipments of freight to be transported between different points within this State are required to be carried by two (2) or more railway companies operating connecting lines, such railway companies shall transport the same at reasonable through rates, and shall at all times give the same facilities and accommodations to local or State traffic as they give to interstate traffic over their line of road.

(*c*) In the event of that said railway companies fail to establish through joint rates, or fail to establish and charge reasonable rates for such through shipments, or fail to establish between themselves the rates and terms upon which cars of one

place of intersection of their said roads at said Hanley Falls, ample facilities by track connections for transferring any and all cars used in the regular business of their respective lines of road from the line or tracks of one of said companies to those of the other, and to forthwith provide, at said place of intersection, equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivering property and cars to and from their respective lines."

Payment of the cost of furnishing this track connection is provided for in section 3 (*a*) of the statute.

No evidence was offered on the part of the companies either before the commission or the District Court. Reliance was placed on the evidence offered upon the part of the defendant in error and upon the admissions made in the District Court.

The following are some of the facts appearing in the record herein:

The road of the plaintiff in error runs from Watertown, in the State of South Dakota, near the western boundary of the State of Minnesota, easterly to Morton, in the latter State, where it connects with the Minneapolis and St. Louis Railroad Company, running from Morton to Minneapolis, and thereby constitutes physically one straight line of road from Watertown to Minneapolis. There is a small station called Hanley Falls, in the State of Minnesota, on the line of the plaintiff in error's

company shall be transferred in such through shipments from the line of one company to the other and returned, or fail to provide for the convenience and prompt transfer of such through freight from the cars of the receiving company to those of the connecting line, it shall be the duty of the Railroad and Warehouse Commission of this State, and said commission is hereby directed, upon the application of any person or persons interested, to establish reasonable joint rates for the shipment of freight and cars over any two or more connecting lines of railroad in this State, and to prescribe the reasonable rules under which any such cars so transferred shall be returned; and in establishing, changing or revising any such rates they shall take into consideration the average of rates charged by said railway companies operating such connecting lines for joint shipments for like distances.

The rates established by said commission shall go into effect within ten (10) days after the same are promulgated by said commission, and from and after that time the schedule of rates so established shall be *prima facie* evidence in all courts of this State that such rates are reasonable through rates for the transportation of freight and cars upon the railroads for which such schedule has been fixed.

(*d*) Before the promulgation of such rates or rules, as above provided, the Railroad and Warehouse Commission shall notify the companies interested in the schedule of joint rates fixed by them, and they shall give said railroad companies a reasonable time thereafter to agree upon a division of charges provided for in such schedule, and in the event of the failure of the railway companies to agree upon such division and to notify the board of such agreement, said commission shall, after a hearing of the companies interested, decide the same, taking into consideration the value of terminal facilities and all the circumstances of the haul,

road, a short distance east of Watertown. The plaintiff in error has a trackage contract, by virtue of which it connects at Merriam Junction, Minnesota, (a station within a few miles of Minneapolis,) with the Northwestern system, and in that way reaches Sioux Falls.

The Willmar and Sioux Falls Railway runs from Willmar, Minnesota, some distance south to Hanley Falls, and thence south to Sioux Falls in South Dakota. This road is operated by the Great Northern Railway Company.

It is 181 miles from Hanley Falls to Sioux City *via* the Willmar and Sioux Falls Railway and its connections, while it is 380 miles between the two places by way of the Wisconsin, Minnesota and Pacific Railroad and its connections, and it requires forty-six to forty-eight hours to transport freight over the latter road from Hanley Falls to Sioux City, while but fourteen hours are required to transport it between those places by the Willmar and Sioux Falls Railway. The tariff rates on stock from Hanley Falls to Sioux City are the same on both roads.

Traffic originating on the railroad of the plaintiff in error west of Hanley Falls and destined to Sioux City could, if transferred at Hanley Falls to the Willmar and Sioux Falls Railway, be transported to its destination by that road, which is 200 miles shorter than by the road of plaintiff in error, in from thirty to thirty-five hours' less time, provided the transfer from the road of the plaintiff in error to that of the Willmar and Sioux Falls road could be made at Hanley Falls in carloads without unloading

and the division so determined by the commission shall, in all controversies or suits between the railroad companies interested, be *prima facie* evidence of the just and reasonable division of such charges.

(*e*) Every unjust and unreasonable charge for the transportation of freight and cars over two or more railroads in this State is hereby prohibited and declared to be unlawful, and every company or person violating the provisions of this section shall be subject to the penalties prescribed in section twelve (12) of the original act to which this act is amendatory.

(*f*) Nothing herein contained shall be construed as requiring any railroad company to send its cars over the line of railroad of another company when its own line of railroad runs to and reaches the point of destination or the point of connection with another railroad on which such point of destination is located, or to use its track or terminal facilities at terminal points for the handling of cars or traffic of another or competing company: *Provided*, That in no case shall the charges for transportation exceed the established through joint rates between any two points.

(*g*) Whenever any property is received by any common carrier, subject to the provisions of this act, to be transported from one place to another within this State, it shall be unlawful for such common carrier to limit in any way, except as stated in its classification schedule, hereinafter provided for, the common law liability with reference to such property, while in its custody as a common carrier; such liability must include the absolute responsibility of the common carrier for the acts of its agents in relation to such property.

from the cars in which the shipments were first made. No facilities have been provided by either of the companies for the transfer or interchange of business at Hanley Falls and there is no track connection between them, although they have track connections and transfer facilities at Minneapolis.

There is an immense supply of wood along the line of the Great Northern system of which the Willmar and Sioux Falls Railway forms a part, much larger than upon the line of the railroad of plaintiff in error, the wood on the line of the latter company being scarce and becoming more so every day. Citizens of towns west of Hanley Falls upon the line of the railroad of the plaintiff in error are purchasers and consumers of wood and posts, and a connection and transfer facilities at Hanley Falls would cheapen these commodities at such towns. Taking the wood from the Willmar road by transferring the cars might result in somewhat lessening the benefit to the plaintiff in error of a much longer haul of dearer wood along its own line.

The farmers along the line of the road of the plaintiff in error, west of Hanley Falls, have heretofore raised many stock cattle which are ready to be fed and fattened for market, the best market for such cattle being Sioux City, in the State of Iowa, "on account of the supply of feed being more plentiful and cheaper at or near Sioux City, and such stock can be sold to the best advantage in the market having the cheapest and best supply of feed." Making the connection at Hanley Falls would result in the use of the Willmar road from that point to Sioux Falls for certain kinds of cattle which otherwise would probably not be carried there and might be sent to the poorer market of St. Paul or Minneapolis, and thus give the plaintiff in error the benefit of its long haul. The result of the continued lack of these facilities might also be that the trade in that kind of cattle would decline and be extinguished among the people west of Hanley Falls, in which event, while no one would be benefited by such want of facilities, many would be injured. At the station at Hanley Falls the tracks of these reepective roads intersect at grade "at a point from 40 to 60 rods distant from the respective depots of the two companies, and in such manner that it is practicable for them to provide ample, equal and reasonable facilities by track connections for the transfer from one of said roads to that of the other of any and all cars of whatsoever name or nature used in the business or on the lines of the roads of the two companies mentioned, or either of them."

There was evidence showing that on account of the great loss in weight of the cattle known as "stockers and feeders" when arriving at Sioux City over the long haul of 380 miles on the road of the plaintiff in error and its connections, that market had become practically shut out from the owners of such cattle living on the road of the plaintiff in error west of Hanley Falls, while the St. Paul and Minneapolis markets, being poor

markets for "stockers and feeders," the trade in that kind of cattle west of Hanley Falls had greatly diminished, and was still diminishing.

Mr. Justice PECKHAM, after stating the foregoing facts, delivered the opinion of the Court.

Before entering upon the discussion of the questions in this case, we desire to say that the briefs filed herein during this term are in plain violation of the amendment to Rule 31, adopted at the last term. (See 178 U. S. 617.) The rule as amended is reproduced in the margin.* The type used in quoting the statute is so small as to be exceedingly difficult to read. Many briefs are still printed on glazed paper. We shall hereafter insist upon a strict compliance with the terms of the rule as amended.

This writ of error has been sued out by the plaintiff in error alone, and various grounds are stated for the claim that the statute upon which the judgment below is founded is a violation of the Constitution of the United States. It is alleged that this judgment, and also the statute, interfere with and regulate interstate commerce, and therefore they violate the commerce clause of the Constitution.

Plaintiff in error urges that transporting cattle from Minnesota to Iowa constitutes interstate commerce, and that neither the State of Minnesota nor its railroad commission has the right to in any manner interfere with or regulate such commerce. The judgment in this case, however, neither regulates nor interferes with that commerce, nor does that part of the statute upon which the judgment is founded. Whether any other portion of the statute does regulate such commerce is beside the question, and it is not necessary to here decide. To provide at the place of intersection of these two railroads, at Hanley Falls, ample facilities by track connections for transferring any and all cars used in the regular business of the respective lines of road from the lines or tracks of one of said companies to those of the other, and to provide at such place of intersection equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivering of property and cars to and from their respective lines, as provided for by this judgment, would plainly afford facilities to interstate commerce, if there were any, and would in nowise regulate such commerce within the meaning of the Constitution. That is all that has been done by the judg-

*31 All records, arguments and briefs, printed for the use of the court, must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume; and as well as all quotations contained therein, and the covers thereof, must be printed in clear type (never smaller than small pica) and on unglazed paper.

ment under review. A State may furnish such facilities or direct them to be furnished by persons or corporations within its limits without violating the Federal Constitution. But the Supreme Court of the State, in the opinion delivered therein, said that there was ample evidence in the case of a necessity for such track connection resulting from the benefit which would accrue to exclusively State commerce when considered alone, to justify the ordering of the connection in question.

What is said in the statute in relation to the establishment of joint through rates for the transportation of freight between points on the respective lines of these roads within the State, and the manner of enforcing the establishment of such rates in case of the omission so to do by the companies, and as to any unjust or unreasonable charge for the transportation of freight or cars, are all matters which do not arise under this judgment, and which may never arise as a result of its enforcement. The tracks being connected, the making of joint rates is a matter primarily for the companies interested, and it may be that they will agree upon them, and thus do away with the necessity of any resort to the courts. The objection that there is any violation of the interstate commerce clause of the Constitution is, we think, clearly untenable.

Adhering strictly to the question involved in this case, namely, the validity or the invalidity of the judgment actually rendered, we are met by the objection of the plaintiff in error that the judgment itself is necessarily and inherently illegal, because upon the conceded facts, if the judgment be enforced, it can only result in taking the property of the plaintiff in error without due process of law, and in refusing it the equal protection of the laws and in depriving it of its liberty to contract with such persons or corporations as it may choose. We think not one of these objections is tenable.

At common law the courts would be without power to make such an order as was made in this case by the State court. Legislative authority would be necessary in order to give power to the courts to render a judgment of this kind. If power were granted by the legislature, and it amounted in the particular case simply to a fair, reasonable and appropriate regulation of the business of the corporation, when considered with regard to the interests both of the company and of the public, the legislation would be valid, and would furnish, therefore, ample authority for the courts to enforce it. (*Atchison &c. Railroad Company* v. *Denver &c. Railroad Company*, 110 U. S. 667, 681; *People ex rel. &c.* v. *Boston & Albany Railroad Company*, 70 N. Y. 569; *People* v. *Railroad Company*, 104 N. Y. 58.)

Railroads have from the very outset been regarded as public highways, and the right and the duty of the government to regulate in a reasonable and proper manner the conduct and business of railroad corporations

have been founded upon that fact. Constituting public highways of a most important character, the function of proper regulation by the government springs from the fact that in relation to all highways the duty of regulation is governmental in its nature. At the present day there is no denial of these propositions. (*Olcott* v. *Supervisors*, 16 Wall. 678, 694; *Cherokee Nation* v. *Southern Kansas Railway Company*, 135 U. S. 641; *United States* v. *Joint Traffic Association*, 171 Id. 505–569, 570; *Lake Shore Railway Company* v. *Ohio*, 173 Id. 285, 301.)

It is because they are such highways that the land upon which the rails are laid, and also that which may be necessary for the other purposes of the corporation, is said to be used for a public purpose, and on that ground the power of eminent domain which is given them is held to be a constitutional exercise of legislative authority. The right of the legislature to tax in furtherance of such use is founded upon the same considerations that the use is a public one, and therefore taxation in support of such use is valid. (*Olcott* v. *Supervisors*, *supra.*) The companies hold a public franchise, and governmental supervision is therefore valid. They are organized for the public interests and to subserve primarily the public good and convenience.

While this power of regulation exists, it is also to be remembered that the legislature cannot under the guise of regulation interfere with the proper conduct of the business of the railroad corporation in matters which do not fairly belong to the domain of reasonable regulation. (*Lake Shore Railroad Company* v. *Smith*, 173 U. S. 684.)

The only question arising as each case comes up for decision is whether in the particular case the power has been duly exercised. Instances where the exercise of this power has been discussed exist in the cases of *Louisville Railroad Company* v. *Kentucky*, (161 U. S. 677, 696;) *Lake Shore Railroad* v. *Ohio*, (173 Id. 285, 292;) *Holden* v. *Hardy*, (169 Id. 376, 392.) The books contain almost countless cases where the question of the police power of the States and its proper limitations and conditions have arisen, but those above cited are sufficient for the purposes of this case.

The argument favoring the invalidity set up by the plaintiff in error, so far as it is founded upon the provisions of the judgment in question, is directed to two alleged facts, the first of which is that by making track connections the plaintiff in error may be deprived of a long haul of a certain kind of cattle, and may be compelled to deliver them in a car to be drawn by the Willmar road from Hanley Falls to Sioux City. This long haul exists, as stated, in transporting the cattle from Hanley Falls directly east for about one hundred miles to Merriam, near Minneapolis, then south for another hundred miles, and then westerly to Sioux Falls, 180 miles further, consuming in the transit forty-six to forty-eight hours, when, if the car were placed on the Willmar and Sioux Falls road at

Hanley Falls, the transportation would cover but 180 miles, and the time consumed in transit would be but fourteen hours.

The other fact referred to relates to the wood transportation. There is now very little wood left along the line of the road of the plaintiff in error east of Hanley Falls, from which to supply consumers west of that station, and the price is dearer than the wood from northern Minnesota along the stations of the Willmar road. But the complaint is that the enforcement of this judgment would compel the plaintiff in error to receive wood from the Willmar road at Hanley Falls, which would thus permit the latter road to enter into competition at stations west of that place with the wood taken from along the line of the road of the plaintiff in error east of that station.

In truth, however, competition in the case of either cattle or wood lies more in assertion than in substantial fact.

First, as to the cattle. This long haul of 380 miles necessarily causes a great loss in weight in the cattle, and much greater liability arises of the lighter cattle being trampled upon and killed by the heavier ones in the same car. Such liability increases the longer the transportation exists. These facts act almost as a complete bar to the traffic in that kind of cattle called "stockers and feeders," from stations west of Hanley Falls over the road of the plaintiff in error to Sioux City. It may be said, therefore, that competition between the roads for the transportation of such cattle to Sioux Falls does not exist. Those who own these cattle and are near enough to Hanley Falls to drive them to that station and there load them upon the Willmar and Sioux Falls Railway do so, but those who are so far off as to make that impracticable have largely given up the attempt to reach Sioux Falls with their cattle on account of the difficulties and losses above mentioned. Nor does the failure of the owners to reach the Sioux City market result in sending all the cattle of the "stockers and feeders" class, which would otherwise go to that market, to Minneapolis or St. Paul, which would give the long haul for those cattle to the road of the plaintiff in error. The evidence is that St. Paul and Minneapolis are much poorer markets for the above named cattle than Sioux City because of the absence of feed in those markets, which is present in large quantities and at cheaper prices at Sioux City. The result has therefore been that this lack of facilities at Hanley Falls has materially injured trade in this particular class of cattle by parties west of Hanley Falls, while the plaintiff in error does not secure any substantially greater amount of such transportation for the Minneapolis or St. Paul market, for the reason just stated.

Second, as to the wood. It seems that there is very little wood along and near the line of the road of the plaintiff in error east of Hanley Falls, and the supply is being rapidly exhausted, but that which yet remains is being brought in decreasing quantities and comes so dear to the inhabi-

tants of towns west of Hanley Falls, that rather than purchase it they will and do drive from ten to fifteen miles to get to a station on the Willmar road, and there buy wood which they bring back for less than it costs to buy wood on the line of the road of the plaintiff in error coming from stations east of Hanley Falls. The country west of Hanley Falls is rolling prairie and produces no wood. The inhabitants of those towns are buying more wood, and yet are taking less from the road of the plaintiff in error. They obtain wood as stated by drawing it from stations on the Willmar road anywhere from ten to fifteen miles away. To furnish facilities therefore at Hanley Falls so that the wood from the forests of northern Minnesota may be brought there on the Willmar road and transferred in cars to the road of the plaintiff in error, and transported to stations west of Hanley Falls, is not in fact to compete or provide for competition with the plaintiff in error in the article of wood. It is simply affording facilities to people along the line of its road west of Hanley Falls to obtain wood by a short haul on the road of the plaintiff in error, which without such facilities would be obtained by many people by drawing it in their own conveyances from stations on the Willmar road.

These are the facts upon which the plaintiff in error must rest its argument, that to enforce the judgment would compel it to pay its share in the cost of the construction of a track to be used for the purpose of depriving the company of its traffic, and transferring it to its competitor. The facts do not afford a fair foundation for the argument.

As has been seen, it is not a case, so far as the cattle are concerned, where the plaintiff in error is deprived of its traffic and compelled to transfer it to another and competing company. The question is whether this company in its effort to compel owners of this class of cattle to transport them over its road to Minneapolis, which is a less favorable market, can rightfully refuse to make track connections with another company, by which the owners of the cattle can reach the more favorable market of Sioux City at such a cost as will render the transportation profitable. In the consideration of this question the further fact must be borne in mind that the failure to get to Sioux City with such cattle does not necessarily result in sending them over the road of the plaintiff in error to either Minneapolis or St. Paul, but the lack of facilities at Hanley Falls simply tends to diminish, if not to extinguish, the trade in such cattle west of that station. Other kinds of cattle would still be sent to St. Paul or Minneapolis the same as ever. Can it be possible that a railroad chartered and built primarily for the accommodation and in the interests of the public can under such facts legally refuse the track connections directed in this case? Can it refuse to obey the commands of the legislature in such case upon the sole ground that it may thereby somewhat lessen the earnings of its road? Or can it refuse to make such

connections because, if they were made, wood could be brought from the forests of northern Minnesota to all towns along its line west of Hanley Falls, and there sold for a less price than can now be done, when without such connection being made the demand for the wood along the line of the road of the plaintiff in error is nevertheless constantly decreasing owing to its quality and price? We think these questions should receive a negative answer. The interests of the public should not be thus wholly, and it seems to us, unjustifiably ignored.

Taking the facts which we have already enumerated into consideration, we think there is no justification furnished for the argument that the judgment, if enforced, would violate any of the constitutional rights of the plaintiff in error. In so deciding we do not at all mean to hold that under no circumstances could a judgment enforcing track connections between two railroad corporations be a violation of the constitutional rights of one or the other, or possibly of both such corporations. It would depend upon the facts surrounding the cases in regard to which the judgment was given. The reasonableness of the judgment with reference to the facts concerning each case must be a material, if not a controlling, factor upon the question of its validity. A statute, or a regulation provided for therein, is frequently valid, or the reverse according, as the fact may be, whether it is a reasonable or an unreasonable exercise of legislative power over the subject matter involved. And in many cases questions of degree are the controlling ones by which to determine the validity, or the reverse, of legislative action.

We think this case is a reasonable exercise of the power of regulation in favor of the interests and for the accommodation of the public, and that it does not, regard being had to the facts, unduly, unfairly or improperly affect the pecuniary rights or interests of the plaintiff in error.

As we have said, it is unnecessary in this case to determine the question of the validity of the whole act with regard to all its provisions and details. We need express no opinion upon that subject. We simply here determine that the judgment actually rendered, directing this track connection to be made and thus affording track facilities at Hanley Falls, does not violate the constitutional rights of the plaintiff in error.

The distinction between this case and that of *Lake Shore &c. Railway Company* v. *Smith*, 173 U. S. (*supra*) is plain. There we held that the statute in question was not a reasonable regulation of the business of the company; that it was the exercise of a pure, bald and unmixed power of discrimination in favor of a few of the persons having occasion to travel on the road, permitting them to do so at a less expense than others, provided they could buy a certain number of tickets at one time. It was not legislation for the safety, health or proper convenience of the public, but an arbitrary enactment in favor of the persons spoken of, who, in

the legislative judgment, should be carried at a less expense than the other members of the community, and there was no reasonable ground upon which the legislation could be rested, unless the simple decision of the legislature should be held to constitute such reason.

In this case the provision is a manifestly reasonable one, tending directly to the accommodation of the public, and in a manner not substantially or unreasonably detrimental to the ultimate interests of the corporation itself.

Although to carry out the judgment may require the exercise by the plaintiff in error of the power of eminent domain, and will also result in some, comparatively speaking, small expense, yet neither fact furnishes an answer to the application of defendant in error. (*Mayor &c.* v. *Northwestern Railway*, 109 Mass. 112; *People* v. *Railroad*, 58 N. Y. 152, 163; *People* v. *Boston &c. Railroad Company*, 70 Id. 569; *People* v. *Railroad Company*, 104 Id. 58, 67.)

The judgment of the Supreme Court of Minnesota is, therefore,

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.